AMERICAN DIS-UNION.

AMERICAN DIS-UNION:

CONSTITUTIONAL OR UNCONSTITUTIONAL?

A REPLY TO MR. JAMES SPENCE

UPON THE QUESTION

"IS SECESSION A CONSTITUTIONAL RIGHT?"

DISCUSSED IN HIS RECENT WORK,

"THE AMERICAN UNION."

BY

CHARLES ED. RAWLINS, JUN.

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."—CONSTITUTION OF THE UNITED STATES, *Art.* 6, *Sec.* 2.

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PREFACE.

A SHORT correspondence with Mr. Spence on the question discussed in the sixth chapter of his work, "The American Union," "Is Secession a Constitutional Right?" led me into a closer inquiry than I had originally intended. The result is seen in the following pages. If they have any merit, it is that I have studiously avoided originality of opinion. The question is essentially one for appeal to authority. What did the framers of the Constitution themselves mean, and how was that document understood by their contemporaries? Hence the profuseness of quotation from the letters, speeches, and works of the leading men of the Revolution.

I have referred to the Essays in the

Federalist as unquestionable authority. They were written by Hamilton, Madison, and Jay, for the express purpose of expounding and recommending the Constitution, just then fresh from the Convention, to their fellow-citizens. Distinguished by remarkable clearness, vigour, and earnestness, they must have had no small effect in the attainment of their object. They express the thoughts, not of partisans, but of patriots and statesmen,—of men who distinctly saw the critical position of their country, and who deeply felt their responsibility in urging the only means of rescue. The main idea pervading the *Federalist* is Nationality. No word more frequently appears on its pages than this. With no less power than fidelity, its authors proved to their countrymen, how all efforts to attain to a genuine Nationality had hitherto been abortive; that a union of States can never make one People; that a Nation consists of individuals, and not of corporate bodies; and, that if they would enjoy the blessings of peace and prosperity at home, and respect and con-

fidence abroad, every State must give up its claim to independent sovereignty in order to secure the consolidation of the Union.

I have freely availed myself of the opinions of Judge Story, in his lucid "Commentaries on the Constitution of the United States," which are indeed founded upon the *Federalist.*

I have quoted also from Mr. Curtis's admirable "History of the Constitution," which contains an interesting account of the failure of the Confederation, and the labours of the Convention. A study of these questions would hardly be complete without a perusal of this work.

It was only while revising my proof sheets that the work of my fellow-townsman, Mr. Thomas Ellison, "Slavery and Secession," fell into my hands. Had I received it sooner I should have been spared some labour in the search for information which that book contains, and probably should not have written at all. I take the liberty, however, of now recommending it as an able and impartial *résumé*

of the history of the Secession movement, more especially in connection with the head and front of offence in the Union,—Slavery.

I have waited patiently for some one better qualified than myself to come forward with a refutation of the great error of Mr. Spence's work, until that work has reached a fourth edition; but I have waited in vain. And now, if only to satisfy my own conscience, the word of truth must be spoken.

If any further apology be needed for requesting public attention to the question I have discussed, it may be found in the great importance of our not only entertaining the most friendly feelings towards a Nation with whom we carry on an extensive commercial intercourse, the limit of which, when Morill Tariffs are swept away among the follies of the past, it is difficult to conceive; but also of forming just opinions of the great political experiment of the government of a people entirely through their representatives, now being assayed on the American continent.

Collective humanity is interested in the result. In the meantime let us be "equitable, nay, forbearant if need be," to their errors, as becomes a nation resting upon a more established basis. Evils are inseparable from every form of Government. Some are peculiar to absolute Monarchy; some to Constitutional Monarchy; some to Democracies. In all are to be found some compensating advantages. The best form is that which permits the gradual adoption of the best principles of each. And that system must contain the most truth which promotes the largest amount of Intelligence and Virtue.

PRINCE'S PARK,
LIVERPOOL,
April, 1862.

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I.

INTRODUCTORY.

Of all forms of government, that of a democratic Republic demands the largest amount of public virtue, both in the governors and the governed. Initiated by the people,—possessed of no innate tendency, like mixed forms of government, to create diversity of interests—regarding as its sole aim the greatest happiness of the greatest possible number—it not only recognizes the people at large as the sovereign power, but it individualizes that power for every adult subject complying with certain needful conditions, when at frequent or stated intervals it appeals for a renewal in its administration. It thus throws all responsibility of success or failure ultimately upon the people themselves. If they suffer themselves to be corrupted by gold,—intimidated by

threat,—silenced by private expectations,—swayed by sectional interests not in conformity with those of the community; if they become listless, inert, or altogether abstinent in the exercise of their public rights: just in proportion as the people thus violate or neglect their duty, will the head-springs of legislation become impure, and its waters flow on with baneful instead of beneficial influence in their course.

On the other hand, if those whom the people elect as their representatives enter the senate-chamber with personal ends to satisfy and sectional prejudices to serve—if they forget that, though elected by a district, they have to legislate for a country—the best intentions of the people may be frustrated. This danger is, however, comparatively small where the power granted is of short duration; and as legislation is controlled in its birth by the force of public opinion, upon which it must depend for successful operation, a representative government is generally true to a nation in proportion as a nation is true to itself.

To say that, the American People have not reached their own Ideal, is but to proclaim the loftiness of its requirements, and to acknowledge the imperfection of all human endeavour. But their best friends must go even beyond this, and confess that even fair and moderate expectations of fidelity to the great trust placed in their hands have not been fulfilled. Have not votes been sold to ambitious candidates, with whom private gain, and not the public good, has been the ruling motive? Have not good men too often retired from the arena of politics absorbed in pursuits of commerce, literature, or science, alike forgetting that the price of freedom in a Republic is, of necessity, personal fidelity and watchfulness, and that superior abilities or larger knowledge are not given for selfish gratification, but "for the glory of their Creator, and the relief of man's estate"? When in Europe Political Economy is asserting the great truth, that individual freedom, in the exercise of skill and the employment of capital, brings the largest gain to the State, it is sad enough to find Young America

putting on the cast-off clothes of the Old World, and endeavouring to reconstruct theories of protection now so entirely exploded. Starting upon her course with all European experience to warn or guide her, she has too persistently used it "like the stern-lights of a ship, which serve only to illumine the track it has passed." She has not only by a false system of taxation prohibited or restricted commerce by high duties, or diverted it by bounties, but her compromises with slavery—that evil so abhorrent to the framers of the constitution, that they believed it could not co-exist with freedom—have spread over North and South a moral leprosy; and exposed the free States to the suspicion that they abolished slavery, not because it was wrong, but because it was no longer remunerative. It has been said, that the transference of the fortunes of our race from Europe to America has been a gain to humanity of at least a thousand years. With no vested rights to obstruct the redress of social wrongs —with no landed aristocracy, Norman or otherwise, to monopolize the soil—no national

debt to burden honest industry — "no entangling alliances" to entail the necessity of large standing armies and heavy taxation—has the progress of America in civilization, in all that constitutes the true life and dignity of a Nation, been commensurate with her advantages, and fulfilled the hopes of humanity?

Whatever may be the answer to these questions, the evils we have referred to are in no degree attributable to the American form of government. This form is exposed to dangers and inconveniences peculiar to itself; but those evils are common to all forms alike. In our own country, William III. practised parliamentary corruption as a system. To Burnet's remonstrance he replied, "Nobody hates bribery more than I; but I have to do with a set of men who must be managed in this vile way or not at all. I must strain a point, or the country is lost."

The Irish Union was notoriously bought with English gold. And Lord Macaulay only dates the extinction of the system as "within the memory of the present generation."[1] Bribery

[1] "History of England," iii. 542.

of voters is rampant enough in our own day, as the recent revelations of Gloucester, Wakefield, and Berwick, testify. Even in our House of Lords, which, constitutionally, may not interfere with elections to the Lower House, it is not uncommon to hear "that the influence of property over its tenants-at-will is perfectly legitimate." The poverty of our free labourers is often unfavourably contrasted with the comfort of slaves, or the full diet of convicted felons. An extended suffrage is denied to our working classes, not because they have no right to its possession, but because they are, it is said, too uneducated for its exercise; and our philanthropists produce maps of the country, darkly shaded by ignorance, pauperism, and crime.

No new country ever has adopted, or most probably ever will adopt, a monarchical form of government, for the feeling of loyalty upon which this form must always depend cannot be transplanted at will. It is, moreover, a tree of slow growth, and for the value of its fruit must always be indebted to age and culture.

In America we have therefore to deal with the only possible form of government, viz.: a democratic Republic. It is useless to attempt judging this by our own standard.

"I find," says De Tocqueville,[1] "that a great number of my contemporaries undertake to make a certain selection from among the institutions, the opinions, and the ideas which originated in the aristocratic constitution of society as it was; a portion of these elements they would willingly relinquish, but they would keep the remainder and transplant them into their new world. I apprehend that such men are wasting their time and their strength in unprofitable efforts. * * * We have not to seek to make ourselves like our progenitors, but to strive to work out that species of greatness and happiness which is our own."

But this is precisely the spirit which English writers too often fail to recognize in American institutions. They bring everything found there to an English standard of taste and opinion, and pronounce accordingly.

Now, whatever is good or bad in the American

[1] "Democracy in America," ii. 354 (American edition).

character, and not common to all other nations, is the result of a new order of society. Though sprung from the Anglo-Saxon race, and continually receiving from it fresh accessions, new principles of political action, especially democratic equality, a different climate and a widely-extended territory have so engrafted new habits and modes of thought upon the original stock, that in the new fruit it is difficult to find a trace of the old.

It signifies little that their practical and material philosophy finds expression in the same language as our own—that Bacon, and Milton, and Shakspeare, are no less venerated by them than ourselves. These act upon a distinct order of mind. We are now essentially two nations, and the same rules of criticism will not apply to both. But there may be still friendship and alliance between us; and these may be all the closer because the monotony of race has been effectually subdued.

Of all the books which the present civil war in America has produced, we must pronounce the work of Mr. James Spence, on "The

American Union," as at once the most brilliant and the most mischievous. It has already reached its fourth edition. A writer in the *Quarterly Review* "can hardly speak too highly of it, and recommends it to all who wish to make themselves acquainted with the facts of the great American controversy, which are so often obscured by passion and distorted by interest." The editor of *All the Year Round* has most admirably epitomized the book for those too busy to read it for themselves. He says, "Mr. Spence has assembled facts and authorities in masterly support of his reasoning, and has grouped them with a temperate and logical clearness that cannot fail to convince. He writes with the discretion of a judge who has all the evidence before him, strong and honest in his own conviction." Indeed, every review that we have seen has more or less adopted Mr. Spence's facts and authorities as if beyond dispute, and apparently without inquiry.

The Americans have certainly not been fortunate in their judge. Mr. Spence's work is a comprehensive condemnation of all that constitutes their National life and character.

Their Constitution is a mistake—their politics lax—their public morality degraded—their justice corrupted—their history perverted, and their patriotic pride a gross exaggeration.

"The trail of the serpent is over it all."

Talent, Literature, and Respectability retire despairing from the scene, disgusted with the present, and hopeless for the future.

Mr. Spence has based his condemnation broadly enough. His philosophy seems to be that history invariably repeats itself. Hence, it is but to trace the experience of the past, and estimate the tendencies of the present, in order to cast the horoscope of the future. Thus, he sweeps the records of history from the fabulous ages down to the present time for an indictment against the American Constitution. The Amphictyonic Council, the Achean league, the Dutch republic, South-American federations, have all failed and disappeared. How, then, can the Federal Union of the United States endure? This would be harmless enough if it were not made preliminary to something far more objection-

able. Having first insinuated the idea that the American Union is inherently defective in the elements of stability, he endeavours to prove that there are grievances (some real and others imaginary) on the part of the seceding States to justify the disruption, and that any attempt to maintain the Union against their will is not only hopeless, but unconstitutional. And he winds up with an attempt to deprive the Northern States of English sympathy, by raking up diplomatic disputes long since forgotten, and reopening treaties which, however disadvantageous to us, are now irrevocable.[1] This effort to stir up the bitter waters of international hatred between England and the free States of the North, on behalf of a confederacy whose end and object is declared to be the organization of Labour on the basis of slavery, deserves the strongest reprobation.[2]

[1] Appendix E.

[2] "But, not to be tedious in enumerating the numerous changes for the better, allow me to allude to one other, though last not least: the new constitution has put at rest *for ever* all the agitating questions relating to our peculiar institutions,—African slavery as it exists amongst us,—the proper *status* of the negro in our form of civilization. This was the *immediate cause of the late rupture and present revolution.* Jefferson, in his forecast, had anticipated this 'as the rock

However much the tone of a large portion of the American press towards this country is to be condemned, that of our own towards America—with far less excuse—has been equally unfriendly. Since this unhappy civil

upon which the old Union would split.' He was right. What was conjecture with him is now a realized fact. But whether he fully comprehended the great truth upon which that rock stood and stands may be doubted. The prevailing ideas entertained by him, and most of the leading statesmen at the time of the formation of the old constitution, were, that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. It was an evil they did not know well how to deal with; but the general opinion of the men of that day was, that somehow or other, in the order of Providence, the institution would be evanescent and pass away. This idea, though not incorporated in the constitution, was the prevailing idea at the time. The constitution, it is true, secured every essential guarantee to the institution while it should last, and hence no argument can be justly used against the constitutional guarantees thus secured, because of the common sentiment of the day. Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. It was a sandy foundation, and the idea of a government built upon it—When the storm came and the wind blew, it fell. *Our new Government is founded upon exactly the opposite ideas;* its foundations are laid; its corner-stone rests upon the great truth that the negro is not equal to the white man; that *slavery, subordination to the superior race,* is his natural and moral condition. *This, our new Government, is the first in the history of the world based upon this great physical, philosophical, and moral truth."—Speech of Vice-President* A. H. STEPHENS, *at Savannah.*

war it has too often spoken of the United States in language which it would not have used when they were an unbroken power. For this result Mr. Spence's work is in no small degree answerable. Readable in its type; clear, flowing, and forcible in its diction; eloquent in its expression; strewed with quotations so apt that they only leave us to regret the absence of all reference to their sources; artistic in all its arrangements, it has caught the popular eye, and has given the public a logical result without the necessity of thought.

But it is with the question discussed in the sixth chapter of his book, "Is secession a constitutional right?" that the following pages have more especially to do. Mr. Spence evinces a peculiar objection to America being considered as in any respect a Nation. It was once said of Goldsmith that he would have returned from foreign travel, bringing home a wheelbarrow, and called that an improvement. Mr. Spence has made a discovery equally important. A citizen of the United States now calls himself an American! Has he forgotten the words of

Washington's farewell address?[1]—"Citizens, by birth or choice, of a common country, that country has a right to concentrate your affections. The name of *American*, which belongs to you in your *National* capacity, must always exalt a just pride of patriotism more than appellations derived from local discriminations." But Mr. Spence repudiates the term "National Government" as quite inapplicable to Congress, and with singular inaccuracy declares it was repudiated by the Federal Convention. He states that those words actually appeared on the face of the first draft of the Constitution, and were struck out by that body on the ground of their being inapplicable to the facts, and opposed to the intentions of its framers.

Mr. Spence is wrong in saying that they appeared in the first draft of the Constitution. They did appear, however, in the first of a series of resolutions adopted by the Convention soon after it had commenced its sittings.[2] These resolutions were subsequently revised, and, in the revision, the term "National Government"

[1] Appendix C.

[2] "History of the Constitution of the United States." Sampson Low & Co., London, 1858, ii. 86.

disappeared from the first resolution simply because it was surplusage. The resolution then read, "That the Government of the United States ought to consist of a *supreme* Legislative Judiciary and Executive."[1] The word "National" attached to these separate departments occurs no less than twelve times in the subsequent resolutions, and in two instances the term "National Government" is used. The intentions of the Convention are more clearly seen by comparing the preamble of the first draft of the Constitution as reported by the committee of detail with that finally adopted.[2] The former says, "We, the people of the States of New Hampshire, Massachusetts, Rhode Island, and the Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following constitution for the government of ourselves and our posterity." Now, as it was obvious that this preamble presumed upon the ratification of the people of all the States; that one of the States

[1] *Idem*, ii. 190. [2] *Idem*, ii. 608.

enumerated, viz., Rhode Island, had sent no representatives to the Convention; and that, moreover, all mention of the objects of the Constitution were omitted; on these accounts it was rejected and the following adopted in its place, "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America."

Had Mr. Spence simply asserted the revolutionary right which permanently exists with every People, we should certainly not have dissented. Our own system of government rests upon the same foundation as that claimed by the People of the United States—"the consent of the governed." To give up this right, inherent as it is in every nation and overriding all constitutions whatever, parchment or otherwise, is to pass over at once to the doctrine of "divine right." Tyranny is not government, and allegiance is due only to protection. Where a government does not fulfil its only

true purpose in the protection of the lives, liberties, and legitimate occupations of the people, it becomes only a nuisance, and the time has arrived for its overthrow.

But the responsibility of revolution under a settled form of government is indeed fearful. Before undertaking it, the evils of endurance, however great, should be long and carefully weighed against those of change and uncertainty. The fabric of civil society ought not lightly to be overthrown. It is easier to destroy than reconstruct; hence revolution is "the extreme medicine of the state." Men are as much bound by the moral law to abstain from its use without good and sufficient reason, as they are by the political law to resort to it when occasion absolutely requires; and when this becomes inevitable, they owe it to a candid world to explain their reasons with the most scrupulous exactness.

Have the Southern States thus justified their rebellion? "Think, if you can," said Mr. Lincoln, in his inaugural address, "of a single instance in which a plainly-worded proviso of the Constitution has been denied." Through

all their ordinances of secession the search is in vain for a record of that "single instance." Many of these give no reason whatever. Alabama sets forth the election of Mr. Lincoln, "following on the heels of many and dangerous infractions," as justifying her withdrawal.[1] South Carolina, the first State to secede, only complains that the free States have not restored her fugitive slaves. The speeches of Southern orators have pleaded protective tariffs and navigation laws excluding foreign vessels from the coasting trade; and, finally, Mr. Jefferson Davis has wound up this impalpable list of grievances with the belief of the Southern States that to remain longer in the Union would be to "subject them to a continuance of a disparaging discrimination, submission to which would be

[1] "Our present purpose does not require us to discuss the propriety of the acts of these States, yet it may be proper for us to say that they find no warrant in any known principle of our Government, and no justification in the facts existing when they seceded. * * * We ask no concession of new or additional rights. We do not fear any immediate encroachment upon our rights as Slave States. * * * The States which have seceded have abandoned the best Government in the world without any good or sufficient cause."—*Address of the Convention of the Border (Slave) States, June,* 1861; PUTNAM'S *Rebellion Record, New York,* 1861.

inconsistent with their welfare, and intolerable to a proud people." Such are the alleged causes set forth to justify revolution. Let us briefly examine them.

We have here two pleas—insecurity to slave institutions, and a protective policy.

With regard to slavery, the whole history of the Union shows that the National concessions have from the very first been only too favourable to the South. They began in the Federal Convention, by conceding an addition to the claims of the white population of the Slave States for proportionate representation of three-fifths their number of slaves.

The revolt of Texas from Mexico was followed by her admission into the Union, against the strong protest of all the free States, after the re-establishment of slavery where it had been already abolished, and this too when Mexico and the United States were at peace. A costly and sanguinary war with Mexico was the consequence, only closed by the purchase of additional territory and the assumption of American claims; these alone amounting to nearly four millions sterling.

The Missouri compromise of 1820, prohibiting slavery from the territory ceded by France north of 36° 30,° after thirty-four years' acquiescence in its provisions by both North and South, has been recalled.

A new and more stringent law was passed in 1850 to facilitate the recovery of fugitive Slaves, and most, if not all, of the free States have repealed their personal-liberty bills, which to some extent obstructed its operation.

The ordinance of 1787, forbidding the introduction of involuntary servitude into the North-Western domain, and for which it is upon record, that at the formation of the Constitution that clause giving the right to demand back "the person held to service or labour in one State under the laws thereof escaping into another," was given as an equivalent, has been abrogated by the "Dred-Scott" decision of the Supreme Court—a decision opening the whole territory of the United States to the polluting influence of that accursed system, preventing its abolition in the district of Columbia, and clearly opposed to the whole spirit, if not the letter, of the

Constitution; and yet we are gravely told, that "power in the hands of the South threatens nothing in the North, seeks nothing from it, desires to disturb nothing in it."[1]

Moreover, it has been shown by Mr. Kennedy, of the Census Bureau, that not more than 1,000 slaves per annum make their escape from thraldrom. In 1860, out of 4,000,000 of slaves only 803 escaped—equal to one-fiftieth of one per cent. Many of these escape southwards and westwards; some to Florida; some to the dismal swamps, until hunted out by bloodhounds; a small proportion only to Canada; and many are recovered by due process of law. That this is not a justification for rebellion, is evident from the fact, that if separation could be effected, the alleged evil would only be aggravated, because no law of extradition would then exist, and the slave, once succeeding in pressing his foot on free soil, would himself be free.

"Up to the present period," says Mr. Spence most correctly, "the Southern interest has

[1] "The American Union," by James Spence, 115. Bentley, London, 1861, 1st edition.

been paramount." Nearly all the presidents have been Southern men; Statesmen fanatically attached to slavery,—which, whether regarded economically or morally, is only an accumulative curse,—have presided at her councils and directed her policy. The North, absorbed in commerce, and hitherto exhausting their love for the Union in vapid words, have been the passive instruments of Southern slaveholders. But when the celebrated Ostend manifesto foreshadowing the seizure of Cuba, the filli-busterings of Walker in Central America, so openly espoused by the South, the attempt to seize upon Kansas, and, finally, the "Dred-Scott" decision, had at last fairly awakened Northern Freemen from their culpable indifference, it was seen that the greed of slavery was insatiable, and, if the Constitution was to retain any vestige of the free spirit which animated its framers, the hour for action had struck. Hence the election of Mr. Lincoln as the representative of a party not desiring to interfere with slavery in the States, but to prevent its further extension. And herein lies the immediate cause of secession. In 1812 Mr.

Calhoun had declared, that whenever the South ceased to control the nation, they would resort to a dissolution of the Union. That time had now arrived.

The second plea for secession, viz., the protective policy, will be more appropriately discussed hereafter. Suffice it here to remark, that pernicious as it always has been to the true interests of both North and South, it has never been objected to *on principle* by any section whatever. Protection was inaugurated at the very birth of the Union. The preamble of the first revenue law ever passed by Congress thus ran: "Whereas, it is necessary for the support of Government, for the discharge of the debts of the United States, *and the encouragement and protection of manufactures*, that duties be laid on goods, wares, and merchandise imported." The great apostle of protection was Mr. Clay of Kentucky; and Southern Legislatures have always advocated a moderate adoption of this policy. The only pleas, then, recorded as justifying revolution are not causes, but pretexts, and serve only to betray a foregone conclusion.

But Mr. Spence goes far beyond this. He claims for seceding States a right of revolution, as founded upon the Constitution, and by an appeal to authorities which, when faithfully examined, appear to us totally opposed to him, he would persuade his readers, that "secession is a just and clear constitutional right of the States, and no violation of any enactment of the Federal compact."

Dissenting entirely from Mr. Spence on this subject, we propose briefly to analyze the Constitution, in order to ascertain how far he is justified in his conclusions. We cannot agree with those who say that the time for this Controversy has gone by; that the right of secession has been practically assumed by the Southern States; that the only problems to be solved now are, which is the stronger party, and what will be the consequences of the struggle to ourselves? On the contrary, we think that both private judgment and national action should depend upon the right solution of the question, "Is secession a constitutional right?"

If the Southern States are only resuming

powers which they never entirely abandoned, but only leased for an indefinite period to the Federal Government, it is clear that, whether their reasons for resumption be good or bad, they are at any rate Constitutional; and the war now waged against them is purely aggressive, and deserving the reprobation of every honest man, and every constitutional government, as one of the most fearful outrages upon human rights recorded in the history of civilization.

But if, on the contrary, secession is nothing more nor less than rebellion not justified by previous oppression of any kind whatever, or by the slightest violation of any clause in the Constitution, then we say that a President, a Senate, and Representatives, who have solemnly sworn "faithfully to preserve, protect, and defend" that Constitution, would be utterly unworthy the name of a government if they did not do their utmost to uphold it.

The advantages that would result from a distribution of the States into two or more confederacies have been much discussed in this country. In no case should we despair of the results of their free government or their republican

institutions without the institution of slavery. Nations, we know, soon settle down after the most violent commotions, and make the best of their new circumstances. But this is a question for the Americans themselves to decide, and one in which we are not likely to intermeddle with any advantage either to them or to ourselves. It is clear that its settlement involves considerations of no ordinary magnitude, such as the navigation of the western rivers, the possession of the territories, the partition of the national debt, and the surrender of National property in the several States. Beyond all these, too, loom greater difficulties to be overcome, and more serious risks to be incurred. "First," says Lord Bacon, "let nations that pretend to greatness have this, that they be sensible of wrongs, either upon borderers, merchants, or politic ministers; and that they sit not too long upon a provocation. Secondly, let them be prest and ready to give aid and succour to their confederates, as it ever was with the Romans." In Europe, density of population, and the humanizing influences of art and commerce, are fast con-

verting Bacon's advice from a rule of statesmanship to a curiosity of history. But in America, under a dissolution of the Union, its authority would for the first time be asserted. The new frontier would be but one long line of military border. Trade and Commerce would languish under the operation of hostile tariffs and the constant dread of civil war. Territorial disputes at home and entangling alliances abroad would create the necessity for standing armies, and impart an entirely new character to the policy hitherto pursued by the Republic both in its internal and external relations. Well may the statesmen of America hesitate before an alternative fraught with dangers such as these.

II.

THE COLONIAL GOVERNMENTS.

AMERICAN freedom is not indebted for its earliest manifestations to any union of the States. Its germs were thrown broadcast over all the various colonies established by the mother country. No matter what was the form of government—Royal, Proprietary, or Charter—in every colony the principle of representative government was early adopted, more or less complete in its arrangement, but always modifying or controlling the encroachments of arbitrary power.

The royal governments comprised the colonies of New Hampshire, New York, New Jersey, Virginia, the Carolinas, and Georgia. Their constitutions closely resembled that of the mother country. Governors and councils were appointed by the crown; representatives by the people. The council acted as an upper house, and the representatives as a lower house,

while the governor had a negative on all their proceedings.

The proprietary governments, comprising Maryland, Pennsylvania, and Delaware, only differed from the royal in this, that in the appointment of governors the proprietaries stood in the place of the crown and exercised, by federal right, all its powers and privileges.

The charter governments were the most democratic of all. They comprised the colonies of Massachusetts, Connecticut, and Rhode Island. In the first the Governor was appointed by the Crown, the Representatives chosen by the people, and the general Council, after the first board, by all three. These constituted one general assembly. In Connecticut and Rhode Island, governor, representatives, and council were all elected by the people. In all these Colonies, however, the power of veto upon every law was reserved with certain conditions to the English Crown.

Thus, the enthusiastic Puritans of New England, the gay Cavaliers of Virginia, the quiet Quakers of Pennsylvania, all proceeding from one common stock, alike exhibited,

amid diversities of government, the old ancestral repugnance to irresponsible authority. Before the reign of King Charles II. all the colonies in America possessed legislatures in which the people had a distinct voice in the enactment of their own laws and the imposition of their own taxes.

No formal or extensive political connection had as yet been established between them. From this, indeed, they were prohibited by the very terms of their relation to the mother country. But, notwithstanding this, every circumstance seemed to conspire for their union. "All the people of this country," says Mr. Jay, "were the subjects of the King of Great Britain, and owed allegiance to him; and all the civil authority then existing or exercised here flowed from the head of the British Empire. They were, in a strict sense, fellow-subjects, and in a variety of respects one people."

Each colony was independent of every other, and none could confer rights and privileges to be exercised elsewhere; but no

[1] STORY'S "Com. Abridgment," ch. xvii. p. 75. Boston, 1833.

alien law had ever excited popular antagonism, —no war between them had left behind it the desire for future revenge. On the contrary, uninterrupted peace, and a free commercial intercourse, secured by the legislation of one parent State, had engendered feelings of mutual goodwill.

Thus drawn together by the cord of one common origin,—protected by one "common law," and acknowledging one common sovereignty,—we are not surprised to note very early attempts at "Union" in spite of prohibitions.

In 1643 the New England Colonies formed a "perpetual" league, offensive and defensive. This league existed for forty years: its interests were superintended by a delegated Congress. Again, in 1754, a Congress of Commissioners, representing the New England and several of the central colonies, resolved that a Union was absolutely necessary for their preservation; and in 1765, after the passing of the Stamp Act, nine of the Colonies sent delegates to a Congress at New York, and declared their inherent right of self-taxation and trial by jury.

In 1774 a still more formal attempt at union was made by Massachusetts. At her instance a Congress of Delegates from all the colonies assembled at Philadelphia. Referring their appointment "to the good people of these colonies," they regularly organized themselves by the adoption of fundamental rules and a declaration of rights. They claimed to be entitled to the "common law" of England, and the benefit of such English statutes as they had respectively found applicable to their circumstances; and they adopted a petition of grievances to the Crown, and demanded redress.

But such redress came not. In vain was the heated oratory of Chatham and the philosophic eloquence of Burke exerted on their behalf in the English Parliament. Both these great men urged upon Lord North to recall the troops and undo all legislation respecting the colonies since the year 1765. Petitions and remonstrances were stifled, or their prayers disregarded.

The crisis of colonial empire had come and passed. The hill-sides and river-banks of

New England were already ringing with sharp peals of musketry. The King's troops and the determined colonists had met, and the first blood had been shed. On the 26th May, 1775, Parliament separated, declaring that "if the Americans should persist in rebellion, and the sword must be drawn, the faithful Commons would do everything in their power to support his Majesty and maintain the supremacy of the Legislature." Almost on the same day, the second Congress of Colonial Delegates met in Philadelphia. On this occasion they organized a general system of physical resistance, and adopted a preamble which stated "that the exercise of every kind of authority, under the crown of England, should be suppressed." They established a general post; they emitted a large amount of paper money, pledging the united colonies for its redemption, and they appointed General Washington commander-in-chief of the forces.

It is more needful, however, to our present purpose to point out that both these important Congresses of 1774 and 1775 had consisted of delegates chosen partly by the representa-

tive branches of the colonial legislatures, but principally by conventions of the people, and in some instances the choice of the former was confirmed by the latter.

"Thus was organized," says Mr. Story,[1] "under the auspices and with the consent of the people, acting directly in their primary sovereign capacity, and without the intervention of the functionaries, to whom ordinary powers of government were delegated in the colonies, the first general or National Government, which has been very aptly called 'the Revolutionary Government,' since in its origin and powers it was wholly conducted upon revolutionary principles. The Congress thus assembled exercised, *de facto* and *de jure*, a sovereign authority, not as the delegated agents of the governments *de facto* of the colonies, but in virtue of original powers derived from the People."

On the 4th July, 1776, the long-anticipated result arrived, and Congress passed the celebrated "Declaration of Independence." The foreshadowing idea of unity is embodied

[1] STORY'S Commentaries, Abridgment, ch. i. 85.

in its very first sentence and through the whole document.

"When, in the course of human events, it becomes necessary for ONE PEOPLE to dissolve the political bands which have connected them with ANOTHER, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." * * * *

"We, therefore, the representatives of *the United States* of America, * * solemnly publish and declare, that these united colonies are, and of right ought to be, Free and Independent States; * * * * and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, *they* have full powers to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration;

* * we mutually pledge *to each other*, our lives, our fortunes, and our sacred honour."

Almost simultaneously with the appointment of a committee to prepare this declaration, a second committee was formed for the purpose of preparing and digesting the form of a Confederation. Congress agreed upon the celebrated "Articles of Confederation" in 1777, but they were not adopted by all the States until 1781.

It is important, however, to observe, that prior to these articles, and in the same document that severed their individual connection with the mother country, the Colonies declared that already they were "the United States of America," and to that union had pledged each other.[1]

[1] "The separate independence and individual sovereignty of the several States were never thought of by the enlightened band of patriots who framed the Declaration of Independence. The several States are not even mentioned by name in any part of it, as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent. Let us then consider all attempts to weaken this union, by maintaining that each State is separately and individually independent, as a species of political heresy which can never benefit us, and may bring on us the most serious distresses."—CHARLES COTESWORTH PINKNEY, *quoted by* MR. EVERETT.

Accordingly, the first article declares that "the style of this Confederacy shall be the United States of America."

But it was no part of their intention to create a central government for the internal regulation of each State; hence the second article asserts "that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

No two or more States could enter into any treaty, alliance, or confederation whatever, between themselves, make war, or send or receive embassies. All powers granted to the General Congress were limited and checked in various ways. Thus, the assent of nine States was essential to the exercise of most of them, although every State was bound by the decision of Congress; the "Articles" were to be inviolably observed; no alteration was to be made therein but by unanimous consent, and the Union was to be perpetual. These Articles, in 1781, had been ratified by the delegates from all the States, upon the in-

structions of the separate Legislatures. Looking at them as a Constitution intended to bind together communities for general welfare, each of them claiming to be sovereign and independent, we are at no loss to perceive why they should have failed in their object of perpetuity. The powers they conferred were neutralized by the restrictions they imposed. Congress, organized for national objects, was thus made a subordinate body —subordinate, not to any individual State, but to the united approval of at least nine States; and when such approval was given, the means of carrying out the object were left to the States themselves. In case of war (then the immediate duty of the Congress), each separate Legislature was to raise, officer, clothe, and equip its own quota towards the general army. Its quota was fixed by Congress, but the taxes for paying that proportion were to be levied by the sole authority and direction of the State; nor did there exist any national Court where obedience, if refused, could be exacted. Looking back over the history of the struggle for independence,

we only wonder how, under such arrangements, it was ever crowned with success.

The Confederation had, in fact, but "a delusive and empty sovereignty." Its main defect was that it had never obtained the consent of the people. In the language of one of the papers in the *Federalist* attributed to Mr. Hamilton, "It has not a little contributed to the infirmities of the existing Federal system, that it never had a ratification by THE PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers; and has in some instances given birth to *the enormous doctrine of the right of legislative repeal.* Owing its ratification to the law of a State, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain that a party to a compact has a right to revoke that compact, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national Go-

vernment deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE."[1]

It is but fair to add that the Committee of Congress, which had drawn up the Articles of Confederation, were not blind to the difficulties of their task. "To form a permanent Union," says their report, "accommodated to the opinions and wishes of the delegates of so many States, differing in habits, produce, commerce, and internal police, was found to be a work which nothing but time and reflection, conspiring with a disposition to conciliate, could mature and accomplish."[2]

The revolutionary war being closed in 1783, by the acknowledgment of the independence of the colonies by the Crown of England, the revolutionary Government began visibly to decline. The Confederation became a "shadow without a substance." The sense of a common danger had in some degree suppressed the

[1] Federalist, 22. M'Lean, New York, 1778. Capitals and italics *sic*.

[2] CURTIS'S Constitution of the United States, vol. iii., 491, Appendix. Sampson Low & Co., London, 1854.

antagonisms of the States; but, that passed away, they revived in all their force; and then it was found that a union of thirteen sovereignties was an impossibility. There existed, however, then as now, two great political parties: the one clung with tenacious fondness to their State independence, and watched with the keenest jealousy any contraction of its sovereignty; the other, without disregarding the claims of the State to its internal government, desired the establishment of a powerful and a National republic.

Between these two parties the Confederation rapidly fell into anarchy and confusion.

III.

THE CONVENTION.

In the previous chapter we have traced the progress of democratic freedom, from its birth in the separate colonies, through successive but partial unions. It is very noteworthy how instinctively at the approach of danger the colonies turned for safety to the idea of union. And this was something more than a union of States: it was a union of people. When in 1774 its necessity had become pressing, and delegates from twelve States were authorized to consult together for "the common welfare;" and again in 1775, when the revolutionary Congress represented all the States; on both these occasions, the delegates referred their authority, not to the State Legislatures, but to the People in their sovereign capacity. They had been appointed principally by the citizens in Convention; and when not so, by the popular branch of the Legislature only. A fatal de-

parture from this mode was adopted in the case of the Confederation, and the delegates were chosen by the State Legislatures.

After the War of Independence had terminated in 1783, that Confederation dragged on through four years of a useless and dishonoured existence. Still, "that Congress should forego the right of originating changes in the system of government; that it should advise the States to confer that power upon another assembly; and that it should sanction a general revision of the Federal Constitution, with the express declaration of its present inadequacy, were all preliminary essentials to a successful reform. Feeble as it had become *from the overgrown vitality of State power*, and from the lack of numbers and talent upon its roll, it was still the Government of the Union; the Congress of America; the lineal successor of that renowned assembly which had defied the power of England, and brought into existence the thirteen United States. If it stood but the poor shadow of a great name, it was still a name with which to do more than conjure; for it bore a constitutional relation to the

States, still reverenced by the wise and thoughtful, and still necessary to be regarded by all who desired the security of Constitutional Liberty."[1]

It was Hamilton—than whom a purer or wiser patriot never lived—who first saw, that while Congress was practically unable to revise its own "Articles," and was utterly powerless under them as they stood, it was nevertheless desirable to obtain its sanction for a new constitution. He, whose "mature and energetic youth, trained in the school of Washington, had been devoted to the formation and establishment of the Union, knew too well that if its golden cord were once broken, no human agency could again restore it to life. He knew the value of habit, the respect for an established, however enfeebled, authority; and while he felt and insisted on the necessity for a new Constitution, and did all in his power to make the country perceive the defects of the old one, he wisely and honestly admitted that the assent of Congress must be gained to any movement which proposed to remedy the evil."[2]

It was therefore resolved, that Congress

[1] CURTIS, i. 362. [2] CURTIS, i. 365.

should be called upon for its sanction to a revision, but not for the revision itself.

On 21st February, 1787, a resolution was adopted by Congress, *recommending* a Convention for the following May.

And here let us observe that Mr. Spence has made an error of no small importance in our discussion. He states that the Convention was "summoned by an act of Congress, which strictly defined its object and powers in these words—'for the purpose of revising the Act of Confederation, and for reporting to the several legislatures such alterations and provisions therein as should, when agreed to in Congress and confirmed by the States, render the federal compact adequate to the exigencies of government and the preservation of the Union.'" "There is clearly," Mr. Spence adds, "no authority here to frame a new system, or effect organic change, but simply to make 'alterations and provisions, to effect a vigorous reform;' nor could the Convention desire to exceed their authority, seeing that the next step was to refer the instrument to Congress for its approval, to the very source of their

authority, whose sanction was essential to the success of their labours."[1]

But Congress was not "the source of their authority," nor did they assemble with the limited powers which Mr. Spence describes. It was only the sanction of Congress that Hamilton had desired, and its "recommendation" for a Convention was all that was given. It was not within the power of Congress to do more than this. One of its acknowledged defects was, that it could only "devise and recommend." Any alterations in its constitution must have been agreed to there, but could only be confirmed by the legislature of every State. Nor did the originating of such alterations necessarily devolve upon that body. It, therefore, simply "recommended" the separate State legislatures to appoint delegates to the Convention for the purposes described in the resolution. And thus Hamilton's politic idea was realized in perfect accordance with the Articles of Confederation.

It is, indeed, quite true, and so much we concede to Mr. Spence, that so wide a scheme

[1] The American Union, by JAMES SPENCE, p. 222.

as an ultimate appeal to the people, for the establishment of a Constitution which was henceforth to act, not upon States, but upon individuals, was not at that time generally entertained. It was rather confined to the master-minds of the country. But every speech and letter on record from those eminent men show that if the Convention had not been invested with authority equal to its objects of preserving the Union and giving to the Government adequate powers, they would never have entered it.[1]

[1] In 1786, a meeting of commissioners from all the States in the Union was summoned by Virginia at Annapolis. Twelve only attended, representing New York, New Jersey, Pennsylvania, Delaware, and Virginia; Madison, Randolph, and Hamilton, were of the number. Their report declared—"That there are important defects in the system of the Federal Government, is acknowledged by the acts of all those States which have concurred in the present meeting; that the defects may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion in some mode which will unite the sentiments and councils of all the States. * * * They are, however, of a nature so serious as in the view of your commissioners to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy."—*The Constitution, by* HICKEY, 163. *Philadelphia*, 1848.

It was almost in precisely the same words as the resolution of Congress that the instructions to their delegates were framed by each of the twelve States adopting this "recommendation." Some of them went even beyond this. Thus, Virginia, Delaware, Georgia, and Massachusetts instructed their delegates to "devise and discuss all such alterations and *further* provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union." Pennsylvania used the same form, but strengthening them by the words "*fully adequate.*" The instructions of North Carolina and New Hampshire were "to discuss and decide upon the most effectual means to remove the defects of our Federal Union, and to procure the enlarged purposes it was intended to effect;" and those of South Carolina, "the devising and discussing all such alterations, clauses, articles, and provisions, as may be thought necessary to render the Federal Constitution entirely adequate to the actual situation and future good government of the Confederated States."

Thus unfettered in action, the Convention

met. George Washington was its president, and some of the ablest men then living in America ("There were giants in those days") were among its members. After four months' protracted debate, on the 17th September, 1787, the States represented unanimously adopted the present Constitution, and resolved that it should be "laid before the United States in Congress assembled." They also declared their opinion that it should afterwards "be submitted to a convention of delegates chosen *in* each State by the people thereof, under a recommendation of its legislature, for their assent and ratification," the result to be reported to Congress, and, in these terms Congress transmitted the Constitution to the States.[1]

Before reviewing the internal evidence afforded by the Constitution, let us see what were the intentions of its framers, as represented by such men as Washington, Hamilton, and Madison; and how far its opponents in the Convention understood those intentions. We perfectly agree with Mr. Spence, that we are

[1] ELLIOTT'S Debates, 248; quoted by Mansfield, 169.

more likely thus to find out what the Constitution really is, than through "the eloquence, however graceful, of partial advocates of the present period."

So early as 1783, General Washington, when giving up his command of the army on the conclusion of the war, addressed a circular letter to the Governors of all the States, wherein we read these words:—

"There are four things which I humbly conceive are essential to the well-being, I may even venture to say, to the existence, of the United States as an independent power:—

"First,—An indissoluble union of the States under one Federal head.

"Second,—A sacred regard to public justice.

"Third,—The adoption of a proper peace establishment; and

"Fourth,—The prevalence of that pacific and friendly disposition among the people of the United States which will induce them to forget their local prejudices and policies; to make those mutual concessions which are requisite to a general prosperity; and, in some

instances, to sacrifice their individual advantages to the interests of the community."

"These are the pillars on which the glorious fabric of our independency and National character must be supported: Liberty is the basis; and whoever would dare to sap the foundation, or overturn the structure, under whatever specious pretext he may attempt it, will merit the bitterest execration and the severest punishment which can be inflicted by his injured country."

Enlarging upon the first of these necessities, he says, that there should be lodged somewhere a *supreme* "power to regulate and govern the general concerns of the Confederated Republic, without which the Union cannot be of long duration;" and he adds, "whatever measures have a tendency to dissolve the Union, or contribute to violate or lessen the sovereign authority, ought to be considered as hostile to the liberty and independency of America, and the authors of them treated accordingly.[1]

[1] SPARKS' Life of Washington, viii. 445. Hilliard, Boston, 1835.

We have seen how the Confederation, in spite of the warnings of this great man, had constantly declined; but in his retreat at Mount Vernon, a watchful eye and a thoughtful mind at once marked its decline and considered its renovation. His correspondence with the leading patriots of the day was incessant. He had asked their opinions upon a new Constitution, and among others, from Madison, who thus replied: "Conceiving that an individual independence of the States is totally irreconcilable with their aggregate sovereignty, and that a consolidation of the whole into one simple Republic would be as inexpedient as it is unattainable, I have sought for some middle ground which may at once support a due supremacy of the National authority, and not exclude the local authorities wherein they can be subordinately useful."[1] And Mr. Jay thus addressed Washington on the same subject:— "What powers should be granted to the Government so constituted is a question which deserves much thought—I think, the more the better, the States retaining only so much as

[1] SPARKS' Life of Washington, ix. 516.

may be necessary for domestic purposes, and all their principal officers, civil and military, being commissioned removable by the National Government * * * No alterations in the Government should, I think, be made, nor if attempted will easily take place, unless deducible from the only source of just authority, the People." [1]

General Knox's opinion is equally strong,— "In my former letters I mentioned that men of reflection and principle were tired of the imbecilities of the present Government, but I did not point out any substitute. It would be prudent to form the plan of a new house, before we pull down the old one. * * * * It is out of all question that the foundation must be of republican principles, but so modified and wrought together, that whatever shall be erected thereon shall be durable and efficient. I speak entirely of the Federal Government, or, which would be better, *one Government*, instead of an association of Governments." [2]

These opinions were given, be it observed,

[1] *Idem*, ix. 572. [2] *Idem*, ix. 515.

before the Convention had met. On the conclusion of its labours, a letter to Congress was adopted, to accompany the Constitution, and officially signed by Washington, as President. From it we make the following extract:—

"It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which *must be surrendered* and those which *may be reserved;* and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

"In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American: the consolidation *of the Union*—in

which is involved our prosperity, felicity, safety; perhaps, our national existence. This important consideration, seriously and deeply impressed upon our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected—a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." [1]

Mr. Hamilton's opinions were no less decisive than those quoted. They are thus given in summary by Mr. Curtis—"All Federal Governments are weak and distracted.[2] In

[1] ELLIOTT'S Debates, 249.

[2] The reader is here warned against supposing that Hamilton would thus have spoken of the present Federal constitution of the United States. The fact is, that the term "Federal" entirely changed its meaning after the Constitution had left the Convention. Up to that time it had described a Federal, as distinguished from a National system of Government, such as that established by the Articles of Confederation. But, when the constitution was before the people for adoption, its advocates were popularly called "Federalists," and its opponents "Anti-federalists," according as they favoured or opposed the enlargement of the Federal powers. Thus Hamilton was no Federalist in 1787, when the opinions in the text were expressed; but he was a Federalist in 1788, and wrote a large number of the celebrated essays published under that name.—*Vide* Hist. of the Constitution, CURTIS ii., 497.

order to avoid the evils incident to that form, the Government of the American Union must be a National representative system. But no such system can be successful in the actual situation of this country, unless it is endowed with all the principles and means of influence and power which are the proper supports of Government.

"*It must, therefore, be made completely sovereign, and State power, as a separate legislative authority, must be annihilated;* otherwise the States will be not only able, but will be constantly tempted, to exert their own authority against the authority of the nation." And, speaking in the New York ratifying convention, he said, "We contend that the radical vice in the old Confederation is, that the laws of the Union apply to States in their corporate capacity. Has not every man who has been in our Legislature experienced the truth of this position? It is inseparable from the disposition of bodies, who have a constitutional power of resistance to examine the merits of a law.[1]

[1] Eloquence of United States, i. 24.

We have thus proved, we trust, by the history of former colonial unions, and by the recorded opinions of some of the most influential fathers or framers of the Constitution, that it was *intended* to establish an indissoluble union of the States, and the complete unity, within prescribed limits, of the National Government; and that these were the great ends to which all other objects were pronounced by the Constitutional Convention of inferior magnitude. What, then, says the Constitution itself?

IV.

THE CONSTITUTION.—ITS FOUNDATION.

We propose now to examine the Constitution of the United States, with special reference to the question discussed in the sixth chapter of Mr. Spence's work—"Is secession a constitutional right?" availing ourselves of such external evidence as may be found in the writings or speeches of its framers.

This remarkable document is of no great length. It is not written in technical phrase, but in the language of ordinary life. It consists of seven articles, and is subdivided into sections and clauses. These relate to the Legislature, the Executive, the Judicial powers, the rights of citizenship, the admission of new States; the amendment of the Constitution, its binding force, its ratification, and a supplement of amendments afterwards adopted. We shall examine such parts as come within the scope of our present inquiry.

The preamble states:—"We, the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do *ordain and establish* this Constitution for the United States of America."

In this preamble we have, first, the authority on which the Constitution is founded—"We, the People." Second, the objects for which it is *ordained and established.* These are to form a more perfect Union, establish justice, insure domestic tranquillity, &c. Third, the subject of it—the United States of America.

The authority, we observe, is the People of the United States; not those of the separate States; still less the States themselves in their corporate capacity, as they were united under the Confederation. The Constitution was proposed by a convention recommended by Congress, the delegates of which were commissioned by the State legislatures. It was ratified by conventions of the people within each State. It is therefore a Constitution

proposed by the individual States, but receiving its sanction and validity from the whole people. Mr. Spence has endeavoured to fritter away the meaning of this phrase, "We, the People," by some very strange arguments, a few of which we must notice.

"It has also been endeavoured," he says, "to impart a peculiar force to this epithet by the deduction that it proved the popular action, and so gave the sanction of its being a direct manifestation of the people's will. The defect of this argument is, that of being directly opposed to historical record. It is the fact, that after the Constitution was framed by delegates of the States, approved by the Congress appointed by the States, and referred to the legislatures of the States, it was finally ratified by a convention called in each State for the purpose."[1]

The words "referred to the legislatures of the States" do not, as we have just shown, give the exact truth. The Convention and the Congress had alike declared that the Constitution should go direct to the people; and if Mr. Spence

[1] The American Union, 224.

means to say that it rested in any way with the State legislatures to determine whether it might or might not be so submitted, we reply it is he who is "opposed to historical record." [1]

He objects to the mode in which the people ratified the Constitution, viz., by conventions of representatives.

He says, "the decision, whether to ratify or not, was left absolutely to these conventions: they acted independently on their own judgment. Their decision, therefore, was an act of the people, simply as a vote of the House of Commons may be called an act of the people, and in no other sense," [2] Certainly! We ask no other admission. How the sovereign power chooses to act does not impugn the act itself. The people, politically speaking, means simply

[1] "Whereas the Convention assembled in Philadelphia pursuant to the resolution of Congress, 21st Feb., 1787, did, on the 17th September in the same year, report to the United States in Congress assembled *a constitution for the people of the United States*, whereupon Congress * * did resolve unanimously, 'That the said report, with the resolution and letter accompanying the the same, be transmitted to the several legislatures, *in order* to be submitted to a convention of delegates, chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case.'"—*Proceedings in Congress*, 13th Sept. 1788. HICKEY'S "Constitution," 190.

[2] The American Union, 224.

its organized portion. No legislature can ever obtain the assent of all the people. Discontented minorities there must always be; and were the objection good, no civil government whatever could be said to have been founded on the consent of the governed.

It is, however, more important to notice Mr. Spence's next objection, since he commits, as we will show, a flagrant error in respect to the intention of the framers of the Constitution.

Speaking of Madison, he says, "It so happens that we have on record his interpretation of this very phrase. In the ratifying convention of the State of Virginia, Patrick Henry objected strongly to the words "We, the People," on the ground that the very construction might be given to them which is attempted at the present day. But Madison at once showed such construction to be erroneous. He replied in these words, 'The parties to it were to be the people, but not the people as composing one great society, but the people as composing thirteen sovereignties.' Not contented with giving the true meaning of the phrase, he

adduced an argument to prove it, by adding, 'If it were a purely consolidated Government, the assent of a majority of the people would be sufficient to establish it. But it was to *be binding* on the people of a State only by their own separate consent. This argument seems to be conclusive, and as an interpreter of the meaning of the terms, none will attempt to compare the authority of Mr. Motley, or of Webster, with that of Madison." [1]

But what if Madison, Motley, and Webster be, after all, agreed? Let us see how stand the facts. In the first place, Mr. Henry worded his objection in reference to the final result of ratification, and not to the act itself; Madison's reply refers to both, and, *when given in full*, shows Mr. Henry's idea to be perfectly correct.

Mr. Henry thus put it, "My political curiosity * * * leads me to ask who authorized them to speak the language of 'We, the People,' instead of 'We, the States' * * * *If the States be not the agents of this compact, it must be one great consolidated*

[1] The American Union, 225. Our Italics.

National Government of the people of all the States." [1]

On another occasion he exclaimed, "The fate of America may depend on this question, have they said 'We, the States?' Have they made a proposal of compact between States? If they had, this would be a Confederation; it is, otherwise, most clearly *a consolidated Government.* The whole question turns, sir, on that poor little thing the expression, *We, the People*, instead of *the States* of America." [2]

It was upon the first of these occasions that

[1] WIRT'S Life of Pat. Henry, 284. Italics *sic.*

[2] *Idem*, 286. Italics *sic.*

"It is also historically known that one of the objections taken by the opponents of the Constitution was 'that it is not a Confederation of the States, but a Government of individuals. It was, nevertheless, in the solemn instruments of ratification by the people of the several States assented to as a Constitution; and although many declarations of rights, many propositions of amendments, and many protestations of reserved powers, are to be found accompanying the ratification of the various conventions, sufficiently evincive of the extreme caution and jealousy of those bodies and of the people at large, it is remarkable that there is nowhere to be found the slightest allusion to the instrument as a Confederation or compact of States in their sovereign capacity, and no reservation of any right on the part of any State to dissolve its connection or to abrogate its assent, or to suspend the operations of the Constitution as to itself."—STORY'S *Abridgement*, 120.

Madison replied in the words quoted by Mr. Spence. But this gentleman does not commence his quotation soon enough, and ends it too soon. We will give it nearly in full. "Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honourable gentleman has alleged, that this Government is not completely consolidated, nor is it entirely federal. Who are the parties to it? The people; not the people as composing one great body, but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated Government, the assent of a majority of the people would be sufficient for its establishment, * * * no State is *bound* by it *as it is* without its own consent. Should all the States adopt it, it will be then a Government established by the thirteen States of *America, not through the intervention of the Legislatures, but by the people at large.*"[1] These last words form a most

[1] Eloquence of United States: Madison in the Virginian Convention, i. 137.

important modification of those only quoted by Mr. Spence. It is his failure to distinguish between the mode of ratification and its results that has blinded Mr. Spence to the fact that, by the Constitution, all sections of the Union are united as one People. And hence he has been led into a justification of the present rebellion, by appealing to the Declaration of Independence, which declares, that governments derive their just powers from the consent of the governed, and to the constitutions of the several States, all of which embody the same declaration. But this is a principle which requires the very strictest interpretation, or it may be made the apology for anarchy. Who are the governed under the Constitution of the United States? The people at large. Whenever they desire to alter that Constitution, it provides for their doing so; and, those means failing, and a decided majority still withholding their "consent," the recognized revolutionary right of overturning the entire structure remains.[1]

[1] The question has often been discussed, whether this mode of ratification marks in any way the character of the Government

Two writers in the *Edinburgh Review*, October, 1861, and in the *Quarterly Review*, January, 1862, have both fallen into Mr. Spence's error. The former—in order to prove his position that the Union has never had the power of a National Government supreme over the People, and after denying that its Constitution was ordained and established by a power superior to the States in their corporate capacity—quotes some words of Madison from the 39th number

established by the constitution. At present it is only necessary to observe, that the design of the committee was to substitute the authority of the people of the States in the place of that of the State Legislatures, for a threefold purpose. First, it was deemed desirable to resort to the supreme authority of the people, in order to give the new system a higher sanction than could be given to it by the State Governments. Secondly, it was thought expedient to get rid of the doctrine often asserted under the Confederation, that the Union was a mere compact or treaty between independent States, and that therefore a breach of its articles by any one State absolved the rest from its obligations. In the third place, it was intended by this mode of ratification to enable the people of a less number of States than the whole to form a new union, if all should not be willing to adopt the new system. The votes of the States in committee, upon this new mode of ratification, show that on one side were ranged the States that were aiming to change the principle of the Government, and on the other the States that sought to preserve the principle of the Confederation."—*History of the Constitution*, CURTIS, ii., 85.

of the *Federalist* explaining the mode of ratification, and supposes they applied to the final result. The ratification was undoubtedly Federal; the combined result was National. But, in the former, the appeal was not made to the legislatures of the States, but to the people in the States, who were sovereign alike over their separate constitutions, and over that one which, when ratified by all, would be supreme over all within its prescribed limits. This explanation should never be lost sight of in our study of the American Constitution.

Our author has, indeed, committed several errors in this part of his inquiry. His great difficulty seems to be how a consolidated State can be a Union. "Union without plurality is a contradiction of ideas." But are we not ourselves citizens of a Union,—a union of States once sovereign and independent, still governed by their own laws, but which now form a united kingdom and a consolidated State? The phrase we are now discussing can have no bearing, he thinks, on the question, unless it indicate a single community,—a "consolidated

State."[1] But no one has ever contended that the Federal Republic is a "consolidated State," but only a consolidated Union; and this designation was given to it by the General Convention itself,[2] and repeated by all the framers of the Constitution.

Again, Mr. Spence supposes that the inequality of the suffrage existing in the several States is one of the proofs that the Republic is not a single People or State. "Were it founded in fact," says he, "the first result, under a republican form of government, would be uniformity of suffrage. The Constitution leaves it to each State to ordain what suffrage it may please. One State may have the most aristocratic, and another the most democratic, of electoral constituencies, without the slightest power in the Federal Government to interfere with either."[3]

We have already said no one has ever spoken of the Republic as a single State.

[1] The American Union, 223.

[2] *Vide* Letter of Federal Convention to Congress, *ante*, 54.

[3] The American Union, 224.

But will Mr. Spence say that the inequality of suffrage in our own country—much greater before the Reform Bill than now—is destructive of our political unity? And why must a Federal Union, with a republican form of government, necessarily have a uniformity of suffrage any more than a monarchy? Surely, a Constitution formed by the people can prescribe its own terms. Besides, it is not true that "the Constitution leaves it to each State to ordain what suffrage it may please." The words are, "The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."[1]

The American Republic is not a simple Republic: it is a Republic of *United States.* The people of each State are (within the limits of a republican form of government) sovereign, as regards their own constitution; and whatever suffrage they consider most

[1] Constitution, Art. i. sec. ii. 1. Appendix.

desirable for their own most numerous branch of legislature, that, the Constitution ordains for the corresponding branch of the National Legislature; while the Senate—also an elective body—must be chosen by the Senate and representatives of the State combined. How these arrangements prevent the inhabitants of all the States forming, for special purposes, and in all their relations to foreign Powers, one single People, we are at a loss to conceive.

V.

THE CONSTITUTION, LEGISLATIVE AND EXECUTIVE.

ARTICLE I.

SECTION I. All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.—1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

SECTION III.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

THESE clauses of the Constitution strongly indicate its real character.

When, in the Virginian Convention, Patrick Henry laboured to show that the proposed Constitution implied a consolidated Government, Madison thus replied: "I myself conceive, that it is of a mixed nature; it is, in a

manner, unprecedented. We cannot find one express prototype in the experience of the world: it stands by itself. In some respects it is a Government of a Federal nature; in others it is of a consolidated nature."[1] And De Tocqueville thus describes it: "In this case the central Power acts directly upon those whom it governs, whom it rules, and whom it judges, in the same manner as, but in a more limited circle than, a National Government. Here the term Federal Government is clearly no longer applicable to a state of things which must be styled an incomplete National Government; a form of government has been found out which is neither exactly National nor Federal; but no further progress has been made, and the new word which will one day designate this novel invention does not yet exist."[2]

Both these descriptions are perfectly accurate. In the Senate, the Constitution is Federal; for the representation is by States, and directly springs from the State Legislatures—

[1] Eloquence of United States, i. 137.

[2] Democracy in America, i. 138. American edition, 1838.

each State sending two senators, irrespective of its size or population. And yet in action it is not wholly Federal; for, every senator having one vote, one may be absent upon a division, and the two are frequently found recording their votes on opposite sides of the same question. In the House of Representatives it is completely National, for there the power is derived directly from the People, and the members count in proportion to population. In the Executive department, it is chiefly National, but in some degree Federal: the latter, because to the Legislature of each State is left the "manner" of appointing the electors, with the proviso, however, that they shall equal in number its senators and representatives together in Congress. Now, as these representatives are in proportion to population, the choice of the Executive becomes mainly National, because it is decided by a majority of the electors so appointed. It may, however, be in a further degree Federal, under a contingency which we shall hereafter have occasion to explain.

The appointment of Vice-President lies also

with the People, and, in case of need, follows a similar course; with this exception, that the ultimate choice is with the Senate, who vote by senators and not by States. The Vice-President is, *ex-officio*, President of the Senate, and in case of equal division, has a casting vote. Thus a man who is the choice of the People at large presides over the House, which is elected by the States in their corporate capacity.

ARTICLE I.

SECTION V.—1. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member.

These clauses are entirely National in their character, and are in accordance with the practice of our own House of Commons. They both form a negative on State sovereignty. The first is, of course, in constant operation. The second can point to a precedent so early

as 1797, when the Senator from Tennessee was expelled for "a high misdemeanour entirely inconsistent with his public trust and duty as a Senator;" his offence being an attempt to seduce an Indian agent from his duty, and to alienate the affections of the Indians from the authorities of the United States. He was afterwards impeached.[1]

ARTICLE I.

SECTION VI.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States.

Compensation to members of Congress for their services is here provided for. It is "ascertained by law." They are not paid by the session, but by the day; and, in addition, a mileage allowance for distance between home and the seat of government is enacted. They are not paid by the separate States, but from the "Treasury of the United States." The receipt of it is not optional: the words are—"They shall receive." Before doing so they take a solemn oath "to support the Constitu-

[1] STORY'S Comm., 299.

tion;" and thus the compensation becomes, as it was doubtless intended to be, an acknowledgment of its National character. By the first draft of the Constitution, each State must have paid its own members, in accordance with the old rule of the "Confederation;" but, for the reason we have now given, a large majority of the States ultimately decided upon payment from the National treasury.

"The compensation," says Story, "is fixed with a liberal view to the National duties, and is paid from the National purse. If the compensation had been left to be fixed by the State Legislatures, the General Government would have become dependent upon the Governments of the States; and the latter could almost at their own pleasure have dissolved it. Serious evils were felt from this source under the Confederation, by which each State was to maintain its own delegates in Congress; for it was found that the States too often were operated upon by local considerations, as contradistinguished from general and National interests."[1]

[1] STORY'S Comm. Abridgment, 306.

ARTICLE I.

SECTION VII.—1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Under the Confederation, the revenue was raised by requisitions upon each State. But the Constitution acts upon *individuals, and not States.* Its power, as De Tocqueville says, "is not borrowed, but self-derived." The right of orginating taxation rests therefore, as in our own House of Commons, exclusively with the representatives of the people.[1]

THE EXECUTIVE.

ARTICLE II.

SECTION I.—1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress. But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

An amendment of the Constitution, very exactly worded, provides that there must be a

[1] Democracy in America, American edition, i. 137.

clear majority of the whole body of electors to constitute an election; and if this fail, the choice from among the three highest candidates is to fall upon the House of Representatives, where the votes are to be taken by States—one vote from each State; so that in this case the election would be more Federal than National—Rhode Island having the same power as the Empire State.

We see, then, that in the United States the choice of President is left, in the first instance, to the people in every State, voting in proportion to the population, by means of a double election. Our own Crown is at once elective and hereditary, for it is subject, by the Act of Settlement, to the consent of Parliament. The office of President differs from it principally in this, that it is vacated every four years, and that its occupant is chosen by the People, and its power controlled by their representatives. In all other respects the power of the President is not less than that of the English Crown; in one respect it is practically greater, because the legislative veto, being subject to reversal by the votes of

two-thirds of each House, has not fallen into desuetude, and its use becomes a sort of appeal to public opinion: thus, the very limit to its authority is an excuse for its exercise.

Under the old Confederation there was no President; and no part of the present Constitution more clearly marks the intentions of its framers to unite the American People as one Nation, than this appointment.[1]

There is no doubt that many of these arrangements were the result of compromise between

[1] "They (the Convention) have not made the appointment of the President to depend on any pre-existing bodies of men who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of *the people of America*, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. * * Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the *people* themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favour was necessary to the duration of his official consequence. This advantage will also be secured by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice. All these advantages will be happily combined in the plan devised by the Convention, which is, that the people of each State shall choose a number of persons as electors equal to the number of senators and representatives of such State in the National Government, who shall assemble within the State and vote for some fit person as President."—*Federalist*, No. 68.

the smaller and larger States, and yet they might have been the suggestion of the highest political wisdom. Complicated as they appear, they have been most efficient in their results. Take, for example, the mode of senatorial election. It forms the true conservative element in the Constitution. We quite agree with Mr. Spence in his approval of Mr. Seward's declaration, "That the Republic has been successful only by reason of the stability, strength, and greatness of the individual States."[1] We could say much the same for our own monarchy, inasmuch as our freedom, as a Nation, undoubtedly rests upon the broad basis of our municipal institutions. The constitution of the Senate satisfied the smaller States of the North, and the larger but less populous States of the South; and all have felt that in one branch of the Legislature, at least, they were upon an equality. The necessity of vesting the legislative power in two Houses was rendered painfully evident by the experience of the Confederation. A resort to the same sources for both would

[1] The American Union, 230.

have been to give up one of the greatest advantages of a second Chamber. On the other hand, to have denied all control in its formation to the sovereign People, would have been to nullify the great principle of the Declaration of Independence, that "governments derive their just powers from the consent of the governed." The State Legislatures had already been elected by the People. To confide to their hands, therefore, the election to the Senate, and in equal proportions, was at once to satisfy the State and the People, and yet in no degree to depart from the principle of a National government.

It has been asserted, that the organization of the Senate is a standing acknowledgment of the complete sovereignty and independence of the several States.[1] Were this the case, so far from its possessing a conservative and beneficial influence, it would become the fertile source of anarchy and confusion. Such sovereignty and independence were the great evils of the Confederation; and all contemporary history shows that their limitation was one of

[1] The American Union, 228.

the principal objects of the Constitution. That assertion, however, is not true. Each State had confessedly the full power to accept or refuse the Constitution. The concession of equal representation in one of the Houses was offered to induce unanimous adoption, and succeeded with only two temporary exceptions, viz., North Carolina and Rhode Island. But the States having accepted it, sovereignty, in the complete sense of the term, was at the same time surrendered.[1] Their separate and independent existence thenceforth continued for internal and municipal purposes. For these, and these only, "the State," to use Mr. Spence's own words, "is as supreme as the Federal law. No question exists of relative rank, of any superiority; each is supreme in its own department; both are equally powerless beyond it."[2] The States are no more separate for all National purposes than are English counties, and far less so than Ireland from England before the Union; and they are

[1] See Letter of the Federal Convention to Congress, accompanying the Constitution, *ante*, 54.

[2] The American Union, 213.

no more independent than our own municipalities, the sole difference being, that in their case autonomy is secured by the supremacy of a Constitution liable to amendment, and in ours by the supremacy of a law liable to change.

VI.

THE SUPREME JUDICIARY.

ONE of the objects of the Constitution, as stated in the preamble, is "to establish justice." The want of a court of final appeal, especially between the States and Congress, had been severely felt under the Confederation. Congress could command; but what if the States would not obey? No means of coercion were provided. Requisitions had been laid upon them for the expenses of the war; but even the struggle for independence failed to arouse them to a sense of their duty. These articles provided that every State should be bound by the decision of Congress, and the right, not only to make these requisitions, and even to compel their payment, was never doubted; but the defect was in the means of enforcement; for the Federal army itself was divided into sectional divisions; it was, in fact, a collection of small armies from the separate

States, and had it been employed for such a purpose, it would have looked more like one State forcing another State, than an act of the General Government, and civil war must have been the result. In short, Congress was entirely Federal in its character, and deficient in the true elements of sovereignty. The Union was nothing but a confederation, and its articles a loose compact. The touch of an armed hand upon any one of its links would have broken the ill-connected chain. Hamilton saw this, when he said in the New York Convention, "Sir, if we have National objects to pursue, we must have National revenue. If you make requisitions, and they are not complied with, what is to be done? It has been well observed, that to coerce the States is one of the maddest projects that was ever devised. But can we believe that one State will ever suffer itself to be used as an instrument of coercion? The thing is a dream. It is impossible. Then we are brought to this dilemma: either a Federal standing army is to enforce the requisition, or a Federal treasury is left without supplies, and the Government without support.

What, sir, is the cure for this great evil? Nothing, but to enable the National Government to operate on individuals in the same manner as those of the States do."[1]

Now, it is clear that in every country in which order is to reign there must be some tribunal, than which there is no higher, or the will of every man will be a law unto himself. If the Constitution was to be the "supreme law of the land," who was authoritatively to interpret its provisions and decide their application? To this important question, therefore, the Constitutional Convention directed its earnest attention, and to its consideration Madison brought the results of very mature study. We find in a letter to Washington, some months before, an opinion thus expressed: — "The National supremacy ought also to be extended, as I conceive, to the judiciary departments. If those who are to expound and apply the laws are connected by their interests and their oaths with the par-

[1] Eloquence of the United States, i. 26. Mr. Spence has used the former part of this quotation as if it had referred to the state of affairs as they exist under the Constitution.

ticular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems, at least, necessary, that the oaths of the judges should include a fidelity to the general as well as lócal constitution, and that an appeal should lie to some National tribunals in all cases to which foreigners or inhabitants of other States may be parties."[1]

One of the first resolutions which the Convention adopted, in conformity with the recommendation of Congress, was,—"That a *National* Government ought to be established, consisting of a supreme Legislature, Executive, and Judiciary."[2] But it was only after long and earnest discussion that the Judiciary was invested with the power to interpret the Constitution. At one time they had decided it should be placed with the National Legislature, with whom they declared ought to vest a power to "negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaties made under the authority of

[1] Life of Washington, ix. 518. [2] Hist. of the Const., CURTIS, ii. 22.

the Union."[1] To this principle Madison at first assented. In the letter last quoted he had "proposed that the Federal Government should be armed with complete authority for for all cases requiring uniformity of taxation and the regulations of trade;" and he went still further:—"Over and above this positive power, a negative *in all cases whatsoever* on legislative acts of the States, as heretofore exercised by the kingly prerogative, appears to me absolutely necessary." Without this, he feared there would be invasion of the National jurisdiction, and discord among the States;[2] and he afterwards, in Convention, suggested that such a power might be vested in the Senate.[3] But he seems to have given up this idea for one equally effective, and likely to be more acceptable to the States. Curtis tells us that it was "at his suggestion a clause in Governor Randolph's plan, authorizing the use of force against a delinquent member of the Confederacy, was laid aside, in order that a

[1] *Idem*, ii. 51. ELLIOTT, v. 139.

[2] Life of WASHINGTON, ix. 517. Italics *sic*.

[3] Hist. of the Constitution, CURTIS, ii. 54.

system might be framed which would render it unnecessary."[1] This was the National Judiciary department.[2]

It is the third power in the Constitution, and exercises the same authority, within the limits of the Constitution, over the people of the United States, as the State Judiciary does over State subjects. It was thus intended to be the last appeal. All cases arising under the Constitution, in law or equity, may be referred to it. It cannot, indeed, exercise a veto upon a State law, even when in violation of the Constitution; but it can produce the

[1] Hist. of the Constitution, CURTIS, ii. 62.

[2] "It is a remarkable circumstance, that this provision was originally proposed by a very earnest advocate of the rights of the States, — Luther Martin. His design, however, was to supply a substitute for a power over State legislation, which had been embraced in the Virginia plan, and which was to be exercised through a negative by the National Legislature upon all laws of the States contravening, in their opinion, the Articles of Union, or the treaties subsisting under the authority of the Union. The purpose of the substitute was to change a legislative into a judicial power, by transferring from the National Legislature to the Judiciary the right of determining whether a State law, supposed to be in conflict with the constitution, laws, or treaties of the Union, should be imperative or valid. By extending the obligation to regard the requirements of the national constitution and laws to the judges of the State tribunals, their supremacy in all the judicatures of the country was secured."—Hist. of the Constitution, CURTIS, ii. 374.

same effect indirectly, inasmuch as a case arising under that law may be decided by it. The dignity of a State is therefore preserved, while its subordinate character is recognized.

Nor was this negation of sovereignty any innovation on pre-existing arrangements. Under the Confederation, the separate States had entirely and for ever divested themselves of the right of deciding upon vexed questions arising out of its articles; and so complete was this surrender, that it was made irrevocable without the consent of the Legislature of every State.[1] In like manner, it was provided that all disputes arising between two or more States, from any cause whatever, *must*, as a last resort, be submitted to Congress, who were to appoint a special court for the purpose, whose "sentence or judgment was to be final and decisive." The more closely we compare the old Articles and the new Constitution, we shall find that in this, as in most other respects, the difference arises, not so much in any new powers granted to Congress, as in making the old powers effectual,

[1] *Vide* Articles of Confederation 9 and 13, Appendix A.

by making them act upon individuals instead of corporations. This alone was required to change Congress from a lifeless anatomy of States into the living and active organization of one People—to convert what had hitherto been a delusive and empty supremacy into a substantial sovereignty, acknowledged by all, and, therefore, endued with all the vigour of National life and the capabilities of permanent greatness.[1]

The Constitution ordains—

ARTICLE III.

SECTION I. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their

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[1] "It seems scarcely to admit of controversy that the judiciary authority of the Union ought to extend to these several descriptions of causes:—1. To all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2. To all those which concern the execution of the provisions expressly contained in the Articles of Union; 3. To all those in which the United States are a party; 4. To all those which involve the *peace of the Confederacy*, whether they relate to the intercourse between the United States and foreign Nations, or to that between the States themselves; 5. To all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased."—*Federalist, No.* 80.

offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.—1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulation, as the Congress shall make.

By the grant of these powers to the National Judiciary, the State sovereignty is very greatly curtailed. There is an exception to the authority of a State even between its own subjects, and this can be exercised in those cases only which arise within its own boundaries. By various other clauses in the Constitution, the States are prohibited from doing a variety of things; and powers not prohibited or delegated to the National Government still belong to

them or the People; but it is by the supreme Judiciary, and not the States themselves, that all cases of doubtful prohibition, delegation, or reservation must be decided.[1] The subordinate character of a State is further shown by the fact, that while the separate States can in no case cite the National Government into a State Court, the latter has the power to

[1] Writing in 1833, Mr. Justice Story says, "The Constitution has now been in full operation more than forty years; and during this period the Supreme Court has constantly exercised this power of final interpretation in relation, not only to the Constitution and laws of the Union, but in relation to State acts and State constitutions and laws, so far as they have affected the Constitution, laws, and treaties of the United States. Their decisions upon these grave questions have never been repudiated or impaired by Congress. No State has ever deliberately or forcibly resisted the execution of the judgments founded upon them; and the highest State tribunals have, with scarcely a single exception, acquiesced in, and in most instances assisted in executing, them. During the same period eleven States have been admitted into the Union, under a full persuasion that the same power would be exercised over them. Many of the States have at different times within the same period been called upon to consider and examine the grounds on which the doctrine has been maintained, at the solicitation of other States, which felt that it operated injuriously upon their interests. A great majority of the States, which have been called upon in their legislative capacities to express opinions, have maintained the correctness of the doctrine, and the beneficial effects of the power as a bond of union, in terms of the most unequivocal nature." — STORY'S Commentaries, *Abridgment*, 132.

cite the State before the Judiciary. The decree, being final, implies too a power of coercion. Suppose this coercion to be resisted by force, that force becomes treason, which is thus defined by the Constitution:—

"Treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving them aid and comfort."

We conclude therefore that the Constitution, by the powers given to its Judiciary, has reduced the sovereign States into something less than sovereign municipalities—merging them all into one great Republic.

VII.

POWERS OF CONGRESS.—TAXATION AND COMMERCE.

The Congress shall have power—

ARTICLE I.

SECTION VIII.—1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States. But all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin; and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

SECTION IX.—1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one

thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of Commerce or revenue to the Ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

SECTION X.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress.

WE have here selected from the Constitution those clauses by which the people have confided to Congress powers to levy taxation and regulate commerce. Some of these are held concurrently with similar powers retained by the several States. Thus, for example, a State can levy taxes, but only locally and for

local purposes; can borrow money, but only on its own credit; can regulate its internal trade; can establish a bankrupt law for its own subjects. But with Congress exclusively rests the regulations of commerce with foreign nations, between the several States, and with the Indian tribes, though dwelling within a State; uniform laws of naturalization; the postal service; and patent rights.

The surrender of State sovereignty is very completely shown by the exclusive powers given to the National Government to regulate commerce. Under the Confederation these powers were retained by the States. At the close of the war Congress applied to each of them for authority to make foreign commercial treaties.[1] Some refused; while others conceded it with conditions so impracticable that no action could be taken. The evil became so intolerable, that Virginia placed it as one of the leading purposes of the constitutional convention, and so it was considered in its deliberations.[2] The duties of that Convention were twofold, viz., to consider "the great objects for

[1] Hist. of the Constitution, CURTIS, ii. 298. [2] *Idem*, ii. 12.

which the Federal Government was instituted," and "the exigencies of the Union." Taxes for the national defence and the general welfare must be classed among the former; the complete power to regulate commerce, among the latter.

The attempt has been made by Mr. Spence and others to justify the present rebellion of the Southern States, on the plea that American tariffs have been unconstitutional. It has been urged that Congress had no power to impose duties for the protection of domestic manufactures; and South Carolina has been pointed out as a State nullifying upon this ground, and to the extent of actual resistance, the tariff act of 1828. It becomes, therefore, important to see what the framers of the Constitution really intended by the words "to regulate commerce," and what the Constitution itself says.

The Constitution forbids,—

First,—Direct taxes not in proportion to population.

Second,—Taxes on exports.

Third,—Any preference of one port over

another, or one part of the Union over another.

The Constitution permits—Taxes, duties or imposts on imports, and grants a special power of prohibiting the importation of slaves after the year 1808.

But it expressly forbids any State from levying duties either on exports or imports, with one slight exception, and that subject to the control of Congress.

It is clear, then, that with the three exceptions named, the right of Congress is both "plenary and indefinite,"[1] to "collect taxes," in order to "provide for the common defence," and "to lay duties and imposts" for the "general welfare of the United States."

It is said, however, that duties imposed with the double object of revenue and protection do not meet these requirements: that revenue is not raised, and, protection being only sectional, the general welfare is sacrificed. But is not this deciding the question by our own modern notions of free trade, and not by the intentions

[1] HAMILTON'S Report as Secretary of the Treasury, in 1791.

of those who framed the Constitution, or the decisions of that Supreme Court ordained to be its interpreter?

Mr. Spence has argued as if American tariffs have protected every Northern citizen at the expense of every Southern. "Is it not a violation," he asks, "of the Constitution so to impose taxation, that it shall benefit one portion of the Union at the expense of the other?"[1] Were it so, we should unhesitatingly answer "Yes." But this could only be done by a partial tax on the South, or a tax on such commodities as the South only consume. Neither has ever been attempted.

Free trade and protective tariffs are still the subjects for discussion in our own country, although John Bright and Richard Cobden long ago settled the question. But in the early days of the Republic, the former was a new doctrine.

Washington said, "The promotion of domestic manufactures will, in my conception, be among the first consequences which may naturally be expected to flow from

[1] The American Union, 192.

an energetic government."[1] And he was proud to address La Fayette thus:—"I have been writing to our friend, General Knox, to procure homespun broadcloth, of the Hartford fabric, to make a suit of clothes for myself. I hope it will not be a great while before it will be unfashionable for a gentleman to appear in any other dress. Indeed, we have already been too long subject to British prejudices. I use no porter or cheese in my family but such as is made in America."[2]

Madison, although considered a free trader, thus spoke in his message of December, 1815:—"However wise the theory may be, which leaves to the sagacity and interest of individuals the application of their industry and resources, there are in this, as in other cases, exceptions to the general rule. * * * In selecting the branches more especially entitled to the public patronage, a preference is obviously claimed by such as will relieve the United States from a dependence on foreign supplies, ever subject to casual failure, for

[1] Life of WASHINGTON, xii. 141. April, 1789.

[2] *Idem*, ix. 465. 1789.

articles necessary for the public defence, or connected with the primary wants of individuals."

And, finally, Justice Story has said, "The very first Congress that ever sat under the Constitution, composed in a considerable degree of those who had framed or assisted in the discussion of its provisions in the State Conventions, deliberately adopted this view of the power. And what is most remarkable, upon a subject of deep interest and excitement, which at the time occasioned long and vehement debates, not a single syllable of doubt was breathed from any quarter against the constitutionality of protecting agriculture and manufactures by laying duties, although the intention to protect and encourage them was constantly avowed. Nay, it was contended to be a paramount duty upon the faithful fulfilment of which the Constitution had been adopted, and the omission of which would be a political fraud, without a whisper of dissent from any side. It was demanded by the people from various parts of the Union, and was resisted by none. Yet, State jealousy

was never more alive than at this period, and State interests never were more actively mingled in the debates of Congress."[1]

It may be said, that at any rate, prohibitory duties are unconstitutional—that the power given is a power to regulate commerce, but not to destroy it; and the objection seems, at first sight, plausible. It was the argument used by the New England States, in their opposition to the Embargo Act of 1807; but a decree of the Supreme Court, settling the question against them, was acquiesced in. That Court has repeatedly decided that the word commerce embraces the "buying, selling, and interchange of all commodities, as well as navigation and intercourse."[2] The regulation of commerce, therefore, extends to its facilities, such as the construction of buoys and beacons, and to the removal of obstructions in rivers and bays. Under this wide range, too, embargoes and prohibitions in navigation have been repeatedly enacted, either for purposes of retaliation, or

[1] STORY'S Commentaries on the Constitution, Abridgment, 377. Boston, 1833.

[2] 9 WHEATON'S Rep., 189. 2 STORY'S Com., 506.

to obtain reciprocity of advantages. It is clear, therefore, that, regarding the Constitution itself, the intentions of its framers, or the practice of successive Governments—nearly all of Southern election—the limit thus proposed to be put upon Congress, in regard to taxation, is not justified by the Constitution.

And when the adoption of even excessive protection is brought forward, in order to justify rebellion, it is well to turn back a few of the pages of our history to note how recent is our own conversion from a similar policy. It is England, whose proud boast has been, that her mission is "to teach the nations how to live," which has set the example of poisoning the sources of national prosperity by commercial restrictions. More especially is she responsible, for this fatal lesson, to the United States. As colonies, both their export and import trade was confined by law entirely to the mother country. So strictly did we enforce this, that, to use the words of Mr. Huskisson, "every petty adventure in which the colonies embarked was viewed, by the merchants of this country and the Board of Trade, as an encroachment

upon the commercial monopoly of Great Britain." The English idea of a colony used to be an extension of the Mother Country, but without representation in Parliament, and an exclusive market for English productions. "The colonists of North America," exclaimed Lord Chatham, "have no right to manufacture even a nail for a horse-shoe." "The only use of American colonies, or West India Islands," said Lord Sheffield, "is the monopoly of their consumption, and the carriage of their produce." This was the principle universally acknowledged, both by commercial men and the statesmen of the day, and thus, up to 1822, our colonial ports were rigidly barred against the admission of foreign ships, or foreign manufactures. After the recognition of American Independence, the United States for several years endeavoured to obtain from us a treaty of navigation, with reciprocal advantages. But England, intent on supporting the monopoly of her ship-owners in the carrying of British produce, absolutely refused, and at length the young Republic retaliated with restrictions similar to our own. For nearly thirty years

the absurdity was exhibited of American ships coming 3,000 miles, with cargoes of cotton, rice, and tobacco, accompanied by English ships in ballast; and English ships returning upon the same route with English produce in payment, accompanied by American ships in ballast. This ruinous system was not terminated until 1815, when the first inroad was made upon those celebrated navigation laws, which had so long been vaunted as a monument of human wisdom, and the source of our commercial and maritime greatness, by a reciprocity treaty with the United States. In the meantime, however, the natural results of mutual restrictions, and the adoption of our own protective policy, had very greatly encouraged American manufactures. Our own tariff, too, had undergone no revision. The importation of American corn was prohibited, until the utmost distress, or even impending famine, compelled its admission. American rice, tobacco, and cotton, were all heavily taxed. Colonial discriminations affected every article of import. Manufacturing and agricultural industry were alike "protected" by enormous

duties. Not a single article of consumption ever came into fair competition with the same article from abroad. Linen, for example, was protected by duties varying from 40 to 180 per cent., with heavy bounties on its export, and woollen and silk manufactures in like manner; while their raw materials were subject to heavy duties, in some cases to the extent of prohibition.

In 1820, the United States still further raised their tariff, not less avowedly in retaliation for our restrictions, than for still further protection. Mr. Addington, our Minister at Washington, thus wrote to Mr. Canning in 1821:—"I have only to add, that had no restrictions on the import of foreign commerce existed in Great Britain, the tariff would never have passed either House of Congress, since the agricultural States, and *especially Pennsylvania*, would have opposed its enactment."

It was not until 1825 that the first innovation was made by us on this wretched system, upon the principle as laid down by Mr. Huskisson, that if 30 per cent. (!) would not sufficiently protect an industry, there was no wisdom in

bolstering it up by a higher duty. And still the producers of sugar, coffee, timber, and corn were exempted from even this "wholesome competition."

A further advance towards a free-trade policy was made by Sir Robert Peel, in 1842, followed, as we all recollect, by the most dismal vaticinations of wretchedness and ruin. Nor, finally, must it be forgotten, that in spite of the advantages which, it was universally acknowledged, had falsified those prophecies, we were, in 1852, threatened with a reversal of that policy during the short return of the Conservative party to power. Our own history, therefore, gives us no right to sneer at the United States for their adoption of protective tariffs, still less to admit them as justifying rebellion.

We have no defence, however, to offer for American tariffs. They have all been enormous blunders. If ever a country was marked out by nature for unrestricted intercourse, that country is the United States. With a dominion stretching from the Atlantic to the Pacific, comprehending every variety of soil

and climate, and watered by numerous rivers, some of them navigable for thousands of miles from their source; bounded on the north by lakes which are indeed inland seas; with inexhaustible mines of coal, iron, lead, copper, and zinc stored up within its limits; with an endless supply of forest timber, and immense tracts of unbroken land, it would seem that here at least might industry be suffered to take a free course without let or hindrance from meddling legislation. And yet, strange to say, it is here, amidst this profusion of natural advantages, that the false policy of protection has made its home, and even appropriated to itself the doubtful honour of being called "the American System."

The Morrill tariff, the latest and worst specimen of this system, was however passed after secession had commenced, and cannot therefore be regarded as one of its causes. Mr. Spence has descanted with extreme fervour upon its complications and absurdities. The task is unfortunately but too easy, although Mr. Cary, the well-known American economist, has shown that, in this respect,

it is exceeded by the late French treaty.[1] But far too much has been made of the Southern grievance of manufacturing protection. All taxes on commodities fall upon the consumer; and, as consumption has always been heavier among the vast thriving population of the North, than among the slave-owners and mean whites of the South (the consumption of slaves hardly entering into the calculation), it is the former who have been the principal sufferers. It is also a recognized truth in political economy, that protective duties, though they are paid sometimes twice over by the consumer, but seldom go into the pockets of the producer. When actually necessary to ensure production, they are lost in its extra cost; and when not so, the constant tendency to equalization of all profits soon sweeps away the temporary advantage. We see this clearly enough now, and it is equally amusing for those who have borne the burden and heat of the controversy, to note how oracular some men have become upon a subject which, only a few years ago,

[1] Appendix D.

divided even the statesmen of our own country.

The power to regulate foreign commerce is an attribute of sovereignty, and no state can properly be called sovereign which does not possess it. Under the Confederation it had, as we have seen, been retained by the separate States, only to be used for mutual injury and restraint. High countervailing duties in one State had co-existed with low duties on the same articles in another, the smuggler receiving a large proportion of the difference, and each State had consulted its own supposed interest without the slightest regard to the welfare of the others. But in the ratification of the Constitution, this vicious power was surrendered to the National Government: the immediate effect was, and the convention so intended it to be, to unite the American people as one nation, instead of a Confederation of States, and as such they are known to the nations and governments of Europe. Where would be the security for their public loans, and for the observance of their commercial treaties, if every State had the right

upon her own judgment of nullifying an Act of Congress, and of seceding from her responsibility, if that act were not repealed? And yet this is the conservative view of the sacredness of a Constitution solemnly ordained and established! How could such right co-exist with that clause which prescribes uniformity as essential for every tax, since one single State objecting would thereby destroy that uniformity, and by thus compelling a repeal might override the decision of all the other States?

American tariffs have been passed by Legislatures fairly elected by the People, on the widest possible suffrage in the North, and by a suffrage in the South which gives to every slave State an additional power equal to three-fifths the number of its slaves. No pretence can, therefore, be set up that they inflict taxation without representation. Erroneous as they are, they have fulfilled the conditions of their enactment, that the duties they have levied should be "uniform throughout the United States."

VIII.

NATIONAL DEFENCE.

ARTICLE I.

SECTION VIII.—10. Congress shall have power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the land and naval forces:

15. To provide for calling forth the Militia *to execute the laws of the Union, suppress insurrections,* and repel invasions:

16. To provide for organizing, arming, and disciplining the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the Officers and the authority of training the Militia according to the discipline prescribed by Congress:

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—And,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION IX.—2. The privilege of the writ of Habeas Corpus shall not be suspended, unless when *in cases of rabellion* or invasion the public safety may require it.

SECTION X.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit, &c.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign Power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

WE have here powers given to Congress by the Constitution to raise armies and a navy, and to call out the militia, in order to execute the laws of the Union, suppress insurrection, repel invasions, and to put down rebellion.

These powers are sovereign and absolute. With them no State intermeddles. So far as they concern National defence from foreign invasion they will not be disputed. We shall, therefore, briefly consider them in relation to the right of coercion upon a State as opposed to the right of secession by a State.

The Constitution was intended by its framers,

and ordained by the sovereign People, to be "the supreme law of the land." To that standard all subsequent legislation was to conform. In all cases of dispute as to conformity, or as to the general interpretation of the document itself, the Judiciary was appointed, as we have seen, to decide; and this it is to do without regard to the Constitution or laws of any State. To its judgment, Congress, State, and individual must alike submit voluntarily or by force.

According to Mr. Spence, the Southern States have not rebelled—but seceded by a reserved right; and one of his arguments is, that there is in the Constitution no provision against a State committing treason. "There is," says he, "a provision against the treason of individuals; and if a State can also commit treason, it would be a strange law that provided against crime on a small scale, omitting to deal with it when on a large one. The men who framed the Constitution were eminently practical men. It cannot be supposed they would slight so formidable a danger—why, then, the omission? For the

soundest and wisest reasons, which we have on record from their own lips."[1]

Mr. Spence has, however, failed to give us "the reasons" that justify his assertion: we must, therefore, resort directly to the Constitution; there we find that "treason against the United States shall consist only in *levying war against them*, or in adhering to their enemies, giving them aid and comfort." Among the powers prohibited to a State, we find it thus written: "No State shall enter into any treaty, *alliance*, or confederation, keep troops or ships of war in time of peace, *enter into any agreement or compact with any other State* or with a foreign power, or engage in war, unless actually invaded or in immediate danger." Have not all these prohibited powers been exercised by the seceding States? Is not the raising of armed forces for the express purpose of obstructing the laws of the Union, and investing and taking forcible possession of national arsenals and fortresses, "levying war against the United States," and therefore treason? Where, then, we ask, is to be found

[1] The American Union, 217.

this boasted immunity of a State from its possibility?

Again, it is stated by Mr. Spence, that the framers of the Constitution contemplated the right of secession, when they provided no force to prevent it. "Other questions," says he, "might be referred to the Supreme Court, but a retiring State withdrew from its jurisdiction; other forms of delinquency could be visited on individuals, but here was the action of a whole community * * * * * No force was to be created adequate to an undertaking of this nature;" and then he cites Madison and Hamilton to prove its deliberate omission.[1]

Omission and authority are both in his own imagination. Mr. Madison's opinion is thus cited by Mr. Spence: "In the constitutional Convention, Mr. Madison declared, that the use of force against a State would be more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts: a union of States contain-

[1] The American Union, 218.

ing such an ingredient seemed to provide for its own destruction."[1]

On turning to Mr. Curtis's account of the speech here referred to, we are at no loss to explain its meaning in quite an opposite way to that of Mr. Spence. Mr. Madison was not opposed to force against a delinquent State; but he desired to effect the same object in a less objectionable way. This could be done by making the Constitution act upon individuals through its Judiciary.[2] But he did not abandon the right of coercion, though he endeavoured to obviate its use. He approved the Constitution which distinctly gives power to Congress to provide and maintain and regulate armies, a navy, and militia, for, among other objects, the suppression of rebellion. And he was no less clear in the ratifying Convention of Virginia upon the right of forcing a State, if need be, to conform to the Constitution. "Congress," said he, "ought to have the power of establishing a uniform system of discipline throughout the States, and to provide for the execution of the laws, suppress

[1] The American Union, 218. [2] Hist. of Const., CURTIS, ii. 62.

insurrection, and repel invasion; * * without a general controlling power to call *forth the strength of the Union* for the purpose of repelling invasions, the country might be overrun and conquered by foreign enemies. Without such a power to *suppress insurrection*, our liberties might be destroyed by intestine faction, and domestic tyranny be established."[1]

It has indeed been said, that the insurrections here spoken of are those *within* and not *of* a State. What then is the meaning of the phrase "in cases of rebellion"? Besides, we have evidence of Madison's opinion, as to what the Constitution ought to provide for in such a case, before that document was framed. In the letter to Washington, before referred to, he says, "An article should be inserted expressly guaranteeing the tranquillity of the States against internal as well as external dangers. *In like manner the right of coercion should be expressly declared.* With the resources of commerce in hand, the national administration might always find means of exerting it by sea or land. But the difficulty and awkward-

[1] Eloquence of the U. States. Madison in Vir. Convention, i. 132.

ness of operating by force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the general and particular authorities, as to answer this purpose; or perhaps some defined objects of taxation might be submitted, along with commerce, to the general authority."

"To give a new system its proper validity and energy, a ratification must be obtained from the People, and not merely from the ordinary authority of the legislatures. This will be the more essential, as inroads on the existing constitution of the States will be unavoidable."[1]

General Knox also wrote to Washington thus: "I speak entirely of the Federal Government, or, which would be better, *one Government*, instead of an association of Governments. The laws passed by the general Government to be obeyed by the local Governments, and, if *necessary, to be enforced by a body of armed men* to be kept for the purposes which should be designated.

[1] Life of WASHINGTON, ix. 518.

All National objects to be designed and executed by the general Government, without any reference to the local Governments. This mere sketch is considered as the Government of the least possible powers to preserve the confederated Governments. To attempt to establish less will be to hazard the existence of Republicanism, and to subject us either to a division by the European powers, or to a despotism arising from high-handed commotion."[1]

Mr. Spence has cited Hamilton, also, as opposed to the use of force upon a refractory State. He gives us an extract from the *Federalist* (No. 15), wherein that statesman says, "The first war of this kind would probably terminate in a dissolution of the Union." In the same number, we find these words, "The great and radical vice in the construction of the existing Confederation is in the principle of legislation for States and Governments, in their corporate and collective capacities, and as contradistinguished from the individuals of whom they exist." But (he argues) as Govern-

[1] *Idem*, ix. 515.

ment implies the power of making laws, it must also have power to punish those who destroy them. This can only be done in two ways, by the coercion of the magistracy, or by that of arms. The former applies to men, the latter to States. If, therefore, the execution of the laws do not require the intervention of the State Legislatures, but are to pass into operation immediately upon the citizens, "their particular Governments could not interrupt their progress *without an open and violent exertion of unconstitutional power.*" [1]

[1] "That there may happen cases in which the National Government may be necessitated to resort to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes exist in all societies however constituted; that seditions and insurrections are unhappily maladies as inseparable from the body politic as tumours and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of Republican Government) has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction. Should such emergencies at any time happen under the National Government, *there could be no remedy but force.* The means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression; and the natural presumption is that they would be ready to do their duty.* * * If, on the contrary, the insurrection should pervade a

For such a contingency as this no Constitution can possibly provide. The views of Hamilton and Madison upon the question of coercing a State, were in perfect accordance. Indeed, all the leading minds of the day saw its necessity, while they dreaded its danger. Jefferson, in a letter to John Adams, 11th July, 1786, after balancing the arguments between obtaining peace with the Barbary States, through purchase or war, says, he should prefer the latter; and, among other reasons, because "It will arm the Federal head with the safest of all the instruments of coercion over its delinquent members."[1] And again, in August following, writing to Colonel Monroe, "It will be said there is no

whole State, or a principal part of it, the employment of a different kind of force might become unavoidable. * * * * * All candid and intelligent men must upon due consideration acknowledge * * *that whether we have one Government for all the States, or different Governments for different parcels of them, or as many unconnected Governments as there are States, there might sometimes be a necessity to make use of a force constituted differently from the militia to preserve the peace of the community, and to maintain the just authority of the laws against those violent invasions of them which amount to insurrections and rebellions." — FEDERALIST, No. 28.

[1] RANDOLPH'S Memoirs of Jefferson. Colburn, London, 1829; ii. 37.

money in the treasury. There never will be any money in the treasury till the Confederacy shows its teeth. The States must see the rod; perhaps it must be felt by some of them. * * Every rational citizen must wish to see an effective instrument of coercion, and should fear to see it on any other element than the water." [1]

This was under the Confederation; but when it had long been foreseen that that compact must be broken up and give place to "a more perfect Union," and when this idea seemed to be realized by the happy expedient of making the Constitution act upon individuals as well as States, and the appointment of a Judiciary supreme over all, Jefferson at once recognized it.

In a letter from Paris, to Madison, dated December, 1787, he says:—"I like much the idea of framing a government which should go on of itself peaceably, without needing continual recurrence to the State Legislatures. I like the organization of the Government into Legislative, Judiciary, and Executive. I

[1] *Idem*, ii. 43.

like the power given the Legislature to levy taxes, and for that reason, solely, I approve of the greater House being chosen by the people directly."[1]

Congress then having the power to provide the force, the question arises with whom rests that of deciding the occasion, and calling it into action. The answer is, "with the President of the United States, the executive of their laws, and the representative of their nationality." An act was passed in 1792, and slightly modified in 1798, which says:—

"Whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by *combinations too powerful* to be suppressed by the ordinary course of judicial proceedings, it shall be lawful for the President of the United States to call for the militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the laws to be duly executed."[2]

In the American war of 1812, Connecticut,

[1] RANDOLPH'S Memoirs of Jefferson, ii. 274.

[2] HILDRETH'S History of the United States, i. 312.

Massachusetts, and Rhode Island claimed this power for the State Governors, and at the same time refused its exercise. But Madison, then President, at once denied it. In his message to Congress, in December, 1812, he says:—

"The refusal was founded on a novel and unfortunate exposition of the provisions of the Constitution relating to the militia. The correspondences, which will be before you, contain the requisite information on the subject. It is obvious, that if the authority of the United States to call into service and command the militia for the public defence can be thus frustrated, even in a state of declared war, and of course under apprehensions of invasion preceding war, they are not one Nation for the purpose most of all requiring it; and that the public safety may have no other resource than in those large and permanent military establishments, which are forbidden by the principles of our free Government, and against the necessity of which the militia were meant to be a Constitutional bulwark."

IX.

SUPREMACY.

ARTICLE IV.

SECTION IV.—The United States shall guarantee to every State in this Union a Republican form of Government; and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.—The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution; or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments; which in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.—1. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States, under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the

United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

We ask any candid reader to examine these articles carefully, and then say if they leave him the slightest justification for asserting the reservation by the States of a Constitutional right of secession from the Union. Let us observe how completely the State is subordinated by them to the Nation. While every State functionary, legislative, executive, or judicial, must take an oath of fealty to the Constitution of the United States, there is no recognition of a State Constitution whatever, except to see that it assumes no other than a republican form of government. Nor is the relation of the Nation to the State a doubtful one. There are no indistinct reservations on the part of the latter, no shadowy claims by the former. The Constitution of the United States shall

be the supreme law of the land, and this supremacy does not refer alone to the conditions it actually embodies, but pushes its claims into an unlimited future. All laws and treaties which shall be made in pursuance of it shall be supreme. The judges in every State are to regulate their decisions by it. And, finally, as if to make assurance doubly sure, it is added, "Anything in the Constitution or laws of any State to the contrary notwithstanding."

Observe, too, how complete is the surrender of the sovereignty in the articles providing for amendments. *The right of demanding a convention of the people to originate them is not claimed by a single State, nor even by a majority of States, but by two-thirds the whole number.* And the ratification is not to depend upon unanimous concurrence, as under the Confederation, but upon that of three-fourths the State Legislatures or Conventions, as the one or the other mode of ratification may be selected, not by the States, but by Congress. To their decision the whole must submit.

The expediency of leaving the whole

question open until each State had had an opportunity of proposing amendments to the proposed Constitution was much discussed at the time. But it was shown by its advocates, and especially by Hamilton and Madison in the "Federalist," that it was confessedly a compromise between the dissimilar interests and claims of thirteen States; that it had been already approved by a representative from each of them save one, viz., Rhode Island, which had taken no part whatever; that no hope could reasonably exist for equal unanimity in another Convention; that no claim to perfection was made on its behalf; that, on the contrary, it provided expressly for its own amendment, at any time, by a mode that was itself a guarantee for the utmost deliberation; and, finally, that the dangers arising from the anarchy and confusion of the country loudly demanded an immediate decision. "A nation without a NATIONAL GOVERNMENT," said Hamilton, on closing the last number of the "Federalist," "is to me an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent

of a whole People, is a prodigy, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States; and, after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that powerful individuals, in this and other States, are enemies to a general national Government in every possible shape." [1]

Conventions of the people in *all* the States *unconditionally* adopted the Constitution, though two delayed doing so for a few months, and seven accompanied their ratification by proposed amendments, many of which were subsequently adopted according to the forms prescribed in the Constitution. To two of these Conventions we now turn for some light upon our present question.

A writer in the "Quarterly Review" [2] asserts

[1] Federalist, No. 85. Capitals, *sic.* [2] January, 1862.

that "Virginia was admitted into the Union with the full knowledge that she had expressly reserved to herself the right of withdrawing, if the powers granted by her then were perverted to her injury." And he attempts to prove this by quoting the following Act of the Virginian Convention, 26th June, 1788, "We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation of the General Assembly, and now met in convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us to decide thereon, *do*, in their name and in behalf of the people of Virginia, declare and make known, that the powers under the Constitution, being derived from the people of the United States, *may be resumed by them* whenever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified by the Congress, by the Senate, or by the House

of Representatives, acting in any capacity, by the President, or any department, or officer of the United States, except in those instances in which power is given by the Constitution for this purpose, and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

The italics are so given by the reviewer, and yet disprove his own assertion. The Convention declared the right of resumption to be reserved, not for herself, but, "for the people of the United States." This declaration of rights, together with certain amendments, was prepared to be presented to Congress, for its consideration; thereby distinctly indicating its national character, and it does not contain a single line which is not in strict conformity to the Constitution.

The reviewer was evidently in ignorance of the proceedings of the Virginian Convention, and has blindly followed Mr. Spence in his too partial quotations. For example, he has endorsed this author's account of the discussion

between Madison and Henry, as to the true meaning of the phrase, "We the people," which account we have elsewhere shown to be erroneous. As a proof that the right of a State to withdraw from the Union at will has never been surrendered, he gives us the tenth amendment to the Constitution, which provides, "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people.*" Now, we ask, what "people" can be meant here, but the people of the United States, as distinguished from those of each State? The previous clause is a proof of this. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by *the people.*" All political authority is derived from the people. Some powers they have reserved for local purposes. Others they have delegated to Congress for the common benefit. Those by which the Constitution, now binding together thirty-four States, may be annulled or amended, rest with the People at large, as a part of their residuary sovereignty, inasmuch

as they have been conferred neither upon the separate Legislatures nor upon the Federal Government.

But who was the author and mover in the Virginian Convention of this declaration of rights and the proposed amendments? No other than Patrick Henry, the stern opponent of the Constitution up to the very moment of its adoption. His evidence, as to what they really meant, will not therefore be doubted. He had proposed that they should be adopted before the ratification; but this proposition had been rejected upon the express ground that it would render the ratification conditional. The Convention, therefore, ratified first, and then adopted Mr. Henry's proposition.[1]

Now, Mr. Spence has referred to some resolutions adopted by the Virginian Legislature in 1798, which appear to assert the right of a State to a temporary and very qualified nullification of an act of Congress, when "a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact was resorted to."

[1] History of the Constitution, CURTIS, ii. 580.

Washington strongly condemned those resolutions, and at his request Patrick Henry came forward, in 1799, as a candidate for the State Legislature, with the express purpose of counteracting their effect. He thus addressed the electors:—

"He told them, that the late proceedings of the Virginian Assembly had filled him with apprehensions and alarm; that they had planted thorns upon his pillow; that they had drawn him from that happy retirement which it had pleased a bountiful Providence to bestow, and in which he had hoped to pass in quiet the remainder of his days; *that the State had quitted the sphere in which she had been placed by the Constitution;* and in daring to pronounce upon the validity of federal laws, had gone out of her jurisdiction in a manner not warranted by any authority, and in the highest degree alarming to every considerate man; that such opposition on the part of Virginia to the acts of the General Government *must beget their enforcement by military power;* that this would probably produce civil war—civil war, foreign alliances; and that

foreign alliances must end in subjugation to the powers called in." * * *

"Having denied the right of a State to decide upon the constitutionality of federal laws, he added, that perhaps it might be necessary to say something of the merits of the laws in question. His private opinion was, that they were *good and proper;* but whatever might be their merits, it belonged to the people, who held the reins over the head of Congress, and to them alone, to say whether they were acceptable or otherwise to Virginians, and that this must be done by way of petition. That Congress were as much our representatives as the Assembly (of Virginia), and had as good a right to our confidence. He had seen with regret the unlimited power over the purse and sword consigned to the general Government; but he had been overruled, and it was now necessary to submit to the constitutional exercise of that power."[1]

Washington himself spoke of these Virginian resolutions, and similar ones passed by the Kentucky Legislature, in 1799, "as

[1] WIRT'S Life of Pat. Henry, 408.

measures systematically and pertinaciously pursued, which must eventually dissolve the Union or *produce coercion.*"[1] We have before shown that both Madison and Hamilton contemplated the possibility of force upon a delinquent State, and we have here two other framers of the Constitution regretting its possible necessity. To Mr. Spence and his *Quarterly Reviewer* we leave the difficult task of reconciling the rights of sovereignty and secession on the one hand, with those of supremacy and coercion on the other.

Let us now turn to the State of New York, the eleventh ratifying State. Here public opinion was greatly divided. All her delegates, with the exception of Hamilton, had withdrawn from the Constitution, on the ground that they had received no instructions to go beyond a revision of the Articles of Confederation. After the Constitution had been referred by Congress to the people in several States, a thorough discussion of its merits had been kept up by the publication of a remarkable series of Essays, published in the

[1] Life of WASHINGTON, xi. 388.

Gazette of the city of New York, under the title of the "Federalist," and of which Madison, Hamilton, and Jay were the authors. When the ratifying Convention of New York met, the two last were its commanding spirits. United with them in opinion and action was Chancellor Robert Livingston, one of the committee of five who had drawn up the Declaration of Independence. Able men were never more needed. The situation was indeed most critical. Eight States had already ratified, one more would complete the requisite number, and the Confederation, distracted by its jealousies and dying of inanition, would virtually cease to exist. The Convention was being held in a small village on the Hudson, some distance from New York, and Hamilton had established a system of horse posts between that place and New Hampshire on the east, and Virginia on the south, the two States whose ratifications were next expected, in order that he might receive the earliest possible information. On the 24th June, 1788, he received intelligence of the ratification by New Hampshire, and the following day Liv-

ingston communicated it to the Convention. Still the opposition was not subdued. The table was covered with amendments, and the adoption of any of these, as a condition of ratification, would have been fatal to its validity. Dismayed for the moment at the danger of so important a State as New York leaving the Confederacy, Hamilton considered if it might not be necessary to accede to a plan whereby she should reserve the right to secede from the Union in case her amendments were not adopted within some limited period. He saw the objection to this course, but not wishing to assume the sole responsibility of risking its apparent alternative, he wrote to Madison as the possibility of receiving a State into the Union in this form :—

"You will understand, that the only qualification will be the *reservation of a right to secede* in case our amendments have not been decided upon, in one of the modes pointed out in the Constitution, within a certain number of years, perhaps five or seven. If this can, *in the first instance,* be admitted as a ratification, I do not fear any further consequences."

The full significance of Madison's reply will be apparent, when we consider the danger that must have resulted to the Union by the secession of a State occupying its geographical centre.

"My opinion is, that a reservation of a right to withdraw, if amendments be not decided on under the form of the Constitution within a certain time, is a conditional ratification; that it does not make New York a member of the new Union, and consequently that she should not be received on that plan * * A Constitution *requires an adoption* in toto *and for ever*. It has been *so* adopted by the other States. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short, any condition whatever must vitiate the ratification. * * * The idea of reserving the right to withdraw was started at Richmond, and considered as conditional ratification, which was itself abandoned *as worse than rejection*."[1]

The *Quarterly Reviewer* follows Mr. Spence in the admirable Jesuitism, that the Constitu-

[1] Hist. of Constitution, CURTIS, ii. 588. Hamilton's Works, i. 464.

tion is only binding so long as a State chooses to continue a member; and that the way not to commit treason, and so invite coercion, is, first, to withdraw from the Union and then defy its authority. As reasonably might the thief claim to withdraw from the authority of a law which he was determined to violate.[1]

A periodical, professing to be the organ of the Conservative party, is here found advocating ultra-revolutionary doctrines. "It is good, also," says Lord Bacon, "not to try experiments in States, except the necessity be urgent, or utility evident; and well to beware that it be the reformation that draweth on the change, and not the desire for change that pretendeth the reformation. And lastly, that the novelty, though it be not rejected, yet be held for a

[1] "I congratulate you on the event which restores you to the public councils, where your services will be valuable, particularly in defending the Constitution and Union against the false doctrines which assail them. That of nullification seems to be generally abandoned in Virginia by those who had most leaning towards it. But it still flourishes in the hotbed where it sprang up."

"I know not whence the idea could proceed that I concurred in the doctrine, that although a State could not nullify a law of the Union, it had a right to secede from the Union. Both spring from the same poisonous root."—Mr. MADISON *to Jos. C. Cabell, Sept.* 16, 1831.

suspect, and, as the Scripture saith, '*That we make a stand upon the ancient way, and then look about us, and discover what is the straight and right way, and so to walk in it.*'" [1]

Thus carefully did our great philosopher guard even needful changes in the laws of a country. But in the pages of a Conservative journal we find the reverence due to the solemn ordinance and establishment of a Constitution by a whole People, and the sacredness of political oaths on the part of its administrators and all public functionaries throughout the land to uphold its supremacy, put aside as of trivial obligation, and made subservient to popular fickleness and the fleeting interests of a section of the community. The right of Revolution by a majority we understand: it is the *lex non scripta* of humanity; but its erection into a system of Government—its recognition by an established Constitution—would be a privilege worthy only of the "Paradise of fools." To such miserable arguments are the advocates for secession driven. Whence, then, is a constitutional right to secede

[1] Essay on Innovations.

derived? Not certainly from the old Confederation; because there the Union was to be perpetual. The defect of that compact lay in its conditions, making union impossible; but certainly not in permitting secession as a right; and not from the Constitution, because in adopting it the Republic entered into that "more perfect Union" which that Constitution was expressly intended to secure.

X.

NULLIFICATION AND SECESSION.

We have so far traced the idea of National union pervading the Republic from the early colonial times, through the abortive Articles of "Confederation," and into the complete organization of an established "Constitution." We have discovered no trace of a reserved sovereignty on the part of the separate States, except for local purposes, or in their power to grant or withhold their consent to the new terms of the Union proposed in 1787. And when such persistent claims to sovereignty are made, it is somewhat important to remark, that, as a historical fact, it was never exercised by any of the original thirteen States of the Union, with two temporary exceptions, and by none of those since admitted, save Texas. Until the Declaration of Independence, the former were all subject as colonies to the

English crown. That document declared them *conjointly* absolved from their allegiance, and thenceforth free and independent *States;* but the same document at once destroyed their independence, for they mutually pledged themselves to act in union. While so united, the Articles of Confederation, binding them together in perpetuity, were proposed and accepted. The Constitution made their Union not less indissoluble and far more perfect, deriving its authority not from the State Legislatures, but direct from the People. In one respect, indeed, this may be considered as a peaceful revolution; for, whereas the Articles had provided that no alteration should be made therein without the *unanimous* consent of all the legislatures; the Constitutional Convention, on the contrary, recommended, and Congress confirmed their recommendation, that the new Constitution should be complete by the ratification of the people of nine States only out of the thirteen. And here we see the wisdom of Hamilton's suggestion, that the sanction of Congress should be secured for a change so complete. So long as unanimity

was required, the simplest revision of the articles would have been difficult, if not impossible; but when an entire reconstruction of the whole system was to be proposed, superseding the Confederation, and resting upon a totally different basis, that unanimity was utterly hopeless. Every State, however, was represented in Congress, and thus the assent of all the States was indirectly obtained to a mode of ratification which, while it enabled each State to act for itself, involved a new principle of Union for the future.

By the time the new Constitution was organized, all the States had ratified it unconditionally, save Rhode Island and North Carolina. These for a few months exercised complete sovereignty; but with these exceptions the Union formed in 1774 ~~never died~~; and we must recollect it was that Union which originally gave the name of "~~State~~" to each of the colonies. Texas stands upon an entirely different basis. She was an independent power recognized in both hemispheres before admission, at her own request, into the Union; but she is no less bound than the other States by

its terms. No pretence is, of course, set up for original sovereignty by the new States; and as these are expressly invested with equal powers to all the rest, some light may be thrown upon our question by tracing them to their origin.

The United States' territories have been acquired from two sources,—firstly, by cession from certain of the original States of lands lying within their chartered limits and claimed by them as successors to the English crown; secondly, by actual purchase with funds from the National Treasury. All these cessions and purchases are alike held for the common benefit, and to Congress is left the exclusive power of deciding when any portion shall be called into existence as a State, and admitted into the Union.

The North-western territory was acquired in 1781, by cession of Virginia. Congress immediately provided for its future division into States, and its direct government in the meantime; and these provisions were, in 1787, enlarged into an ordinance of law, stating fundamental articles of compact between the people

settling in the territories and the original States,—articles which were declared to be unalterable, except by common consent.[1] The fourth clause in this ordinance is to the effect, that the territory and the States to be formed therein *shall for ever remain a part of the Confederation, subject to the constitutional authority of Congress.* The fifth provided, that when a particular district should contain sixty thousand free inhabitants, they should be at liberty to frame a permanent constitution, and a State Government of republican form, in conformity with the United States Constitution.[2] Five States—viz., Ohio, Indiana, Illinois, Michigan and Wisconsin—have all been admitted into the Union under these conditions, which are distinctly recognized by their several constitutions. We take one as an example, that of Ohio:—"We, the people of the Eastern division of the territory of the United States north-west of the river Ohio, having the right of admission into the general Goverment as a *member of the Union consistent with the Consti-*

[1] "History of the Constitution," Curtis, i. 296.
[2] *Idem*, i. 305.

tution of the United States, the ordinance of Congress of 1787, and the law of Congress, entitled 'An Act to enable the people of the Eastern division of the United States northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes,' in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following Constitution or form of government, and do mutually agree with each to form ourselves into a free and independent State, by the name of the State of Ohio."

We have here a distinct recognition not only of the supremacy of the Constitution, but of ordinances and laws passed previous, and subsequent to, its adoption. Indeed, this is expressly provided for by the first clause of the sixth article, "that all debts contracted, *and engagements entered* into, before the adoption of this Constitution, shall be as valid against the United States under

this Constitution as under the Confederation."

The purchase of the territory of Louisiana from France in 1803, now divided into six States, exceeding in extent the whole limits of the original Republic, is a still more decisive case. No power had been given to Congress for such a purchase, and at the time it was stoutly resisted. It was contended, that already the Union was too large for one general government, and to add to it was only increasing the encumbrance. The New England States opposed it, because it would ultimately throw the balance of State interests into the west, and, in the meantime, interfere with the trade of the Atlantic States. The vast advantages, however, to be gained by the command of the Mississippi, from its source to its mouth, decided the question. But the only ground on which it could be defended was that of the common welfare.

Is it to be supposed for one moment that Congress would have paid fifteen millions of dollars for a free outlet to western productions if they had believed that it was only to trans-

fer the right of closing it from one sovereign power to another?[1]

"For the entire region west of the Alleghanies, and east of the Rocky Mountains," says Mr. Everett, "the Missouri and the Mississippi form the natural outlet to the sea. Without counting the population of the seceding States, there are ten millions of the free citizens of the country between Pittsburg and Fort Union who claim the course and the mouths of the Mississippi as belonging to the United States. * * * Louisiana, a fragment of this colonial empire, detached from its main portion, and first organized as a State, undertakes to secede from the Union, and thinks that by so doing she will be allowed by the Government and people of the United States to revoke this imperial transfer, to disregard this possession and occupation of sixty

[1] "We, *the people of Louisiana*, recognize the right of free navigation of the Mississippi river and tributaries by all *friendly states* bordering thereon. We also recognize the right of the ingress and egress of the mouths of the Mississippi by *all friendly states and powers*; and hereby declare our willingness to enter into stipulations to guarantee the exercise of those rights."—*Louisiana Ordinance of Secession*, PUTNAM'S *Record*, *No.* 27.

years * * * * and she fondly believes that ten millions of the free people of the Union will allow her and her seceding brethren to open and shut the portals of this mighty region at their pleasure."

The territory of Louisiana has given six new States to the Union, viz., Louisiana, Arkansas, Missouri, Iowa, Minnesota, and Kansas, and all their several Constitutions have distinctly recognized the supremacy of that of the United States; that of Arkansas, for example, claimed in its preamble, "the right of admission into the Union, as one of the United States of America, consistent with the Federal Constitution." Their existence is owing to an act of sovereignty under powers not given to Congress by the Constitution, and which therefore could only be justified by the intrinsic character of supreme authority.

Now, as it is beyoud a doubt that every new State enters the Union with the same rights as those already in it, and as Congress has not the power to alienate or dispose of the territories except for the common benefit,

the conclusion seems inevitable, that neither the new States formed out of those territories, nor the old States to which they originally belonged, can have any reserved right of withdrawing from the Union.

It has been argued that, as no prohibition of secession appears on the face of the Constitution, the right continues in full force; and that one effect of the omission is to compel those who deny it to proceed upon a system of inferences.

To these arguments we emphatically object. The "inferences" are all on the side of our opponents, the direct proofs with ourselves. Mr. Spence, for example, contends that the Constitution is only the Articles revised,—that "there occurred a radical reform of government, but no organic change;" and, therefore, instead of following the rule he had himself laid down of appealing to the framers of the new Constitution for its interpretation, or to the Constitution itself, he goes back to the old articles to find what is the present relation of the States to each other. But we contend that those articles can only prove their rela-

tive position at that time. "We must observe," says Curtis, "the position of the States when thus assembled in convention. Their meeting was purely voluntary; they met as equals, and they were sovereign political communities, whom no power could rightfully coerce into *a change of their condition.*" That condition was, that each State was a distinct unit in a perpetual federation of States. Their separate right to adopt or reject a Constitution which changed that condition has never been doubted, but, having once adopted it, a State no more retained the right of withdrawal than the remaining States of expulsion.[1]

To this argument Mr. Spence has objected, that to compel a State either to remain within the Union, or withdraw from it, are alike

[1] "If one State can, at will, withdraw from the others, the others can, at will, withdraw from her, and turn her, *nolentem volentem*, out of the Union. Until of late there is not a State that would have abhorred such a doctrine more than South Carolina, or more dreaded an application of it to herself. The same may be said of the doctrine of nullification which she now preaches, as the only faith by which the Union can be saved."—*Mr.* MADISON *to Mr. Trist, Dec.* 1832; BENTON'S *Thirty Years' War*, i. 357.

restraints upon its sovereignty. "Both," he contends, "really involve the same principle; ejection and imprisonment are equally acts of compulsion." We admit the premises, but deny the right, either to secede or to expel. For, whether a State chose to go out or remain, against the declared will of the others, its sovereignty, so far, would dominate over theirs, and the compulsion objected to for the one State would be inflicted upon all the rest.

Nor can we admit that the work of the Federal Convention was a mere revision of its articles on the old basis.[1] Had that Body believed that such would have met the exigencies and fulfilled the purposes of the Union, they would have adopted a scheme of a purely Federal character, such as that proposed

[1] "Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of a providential agency. And in the important revolution just accomplished in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted, cannot be compared with the means by which most governments have been established, without some return of pious gratitude, along with a humble anticipation of the future blessings which the past seem to presage."—WASHINGTON'S *Inaugural Address.*

under the name of "The New Jersey Plan," which was actually discussed and rejected.[1] But, for the sake of argument, let us test this alleged right of secession by an appeal to the Articles of "Confederation." Their second clause distinctly asserted the sovereignty, freedom, and independence of each State, with certain limitations, one of which was, that it was bound by a perpetual union with the others; but all mention of even this limited sovereignty is omitted from the "Constitution," and this condition only is inserted:—"that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People." And this, too, in the form of an amendment, after the Constitution had been acknowledged by all the States to be the supreme law. It follows, then, that as no power of secession existed under the Confederation, it cannot even by inference exist under the Constitution.

Under the Confederation the States had indeed retained too much independence, as

[1] "History of the Constitution," Curtis, ii. 109.

was acknowledged by all parties. The extent of curtailment was the point of contention. Thus Patrick Henry exclaimed in the Virginian Convention, "To all the common purposes of legislation, it (the Constitution) is a great consolidation of Government. * * What shall the States have to do? Take care of the poor; repair and make highways; erect bridges, and so on, and so on! Abolish the State Legislatures at once. What purposes should they be continued for?" They were continued for purely State Legislation. Their sovereignty was thenceforth to be still further shared with others. Political sovereignty *is* capable of partition, but not its exercise. The partition indeed may be for a limited period, at the expiration of which the whole power will revert to its original owner; but in the meantime it is the powers which make up that complete sovereignty that must be divided.

In the case now before us the terms of the partition are embodied in a Constitution, "ordained and established," and therefore subject to no limit of time. The powers

are so divided, that those of one class are National, and those of another Municipal—both acting independently in their appropriate spheres.

It might have seemed superfluous to argue against the doctrine, that a solemn compact does not bind the parties to it, except a positive prohibition against withdrawal be inserted; but as the Southern Rebellion has been so justified, we must endeavour to refute the doctrine. Is this a consequence of other compacts, commercial, social, or international? Take one example. Marriage is a civil contract. It is perfectly voluntary in its character. No law exists for forcing either party into it; but when completed, are not the parties indissolubly bound, so far as their individual will is concerned? True, means of separation are provided when the conditions of union are not fulfilled, but those means lie not with the parties themselves, but with the judges interpreting the law. The Union of the States was not a mere partnership, where, no term being fixed, each partner might break it up at will; or where, a period being fixed, separation would

then naturally ensue.[1] It was rather a political marriage, and, as a nation never dies, no limit could possibly be fixed for its duration. Its object was expressly to secure the blessings of liberty to the people of the United States and their posterity. One escape is, however, provided, should circumstances interfere to prevent the attainment of that object. The terms of Union may be amended, or entirely abrogated, upon a proper appeal to the People, or to the States; and thus the Union itself may be dissolved by concurrence of three-fourths of the State Legislatures, or State Conventions. What more than this could the wildest revolutionist desire?

There are two alleged State rights which Mr. Spence appears to us to have utterly confounded: the right of secession and that of

[1] "We had thought that the Federation was of the nature of a nationality; we find it is nothing more than a partnership. If any State may, on grounds satisfactory to a local convention, dissolve the union between itself and its fellows; if discontent with the election of a President, or the passing of an obnoxious law by another State, or, it may be, a restrictive tariff, gives a State the right of revolution, and permits it to withdraw itself from the community, then the position of the American people with regard to Foreign Powers is completely altered."—*London Times, 9th Jan.* 1861.

nullification.[1] We have seen that the former is a withdrawal by a State, at its own will and upon its own terms; but the latter is something short of this. Secession, as a Constitutional right, is an entirely new doctrine. It was never broached on the floor of Congress, until 1811,[2] and only at rare intervals up to 1837. In that year, Miss Martineau, after a most careful analysis of the whole policy of the United States, wrote, "Nothing worse than professed nullification has yet been heard of, unless Colonel Burr's secret schemes were indeed treasonable."[3] Secession was indeed

[1] "It is known to senators who have served here, that I have for many years advocated, as an essential attribute of State sovereignty, the right of a State to secede from the Union. * * * I hope none will confound this expression of opinion with the advocacy of the right of a State to remain in the Union, and disregard its constitutional obligations by nullification. Nullification and secession are indeed antagonistic principles. Nullification is the remedy which is to be and ought to be applied within the Union against an agent of the United States when the agent has violated constitutional obligations. * * * Secession belongs to a different class of rights, and is to be ratified upon the basis that the States are sovereign."—*Speech of* JEFFERSON DAVIS *on leaving the Senate, Jan.* 1861. PUTNAM'S *Record, Document* 23.

[2] History of the United States, by HILDRETH, i. 226.

[3] Society in America, i. 91.

sometimes spoken of in the early days of the Constitution, and Mr. Spence has, we think, very erroneously dated its birth at that period. He refers to a letter, addressed by Jefferson to Washington, urging him to accept his re-election to the Presidency, on account of the otherwise extreme danger of "secession";[1] but any one who candidly reads that letter will see that the word was not used by him as expressing an alleged Constitutional right, but as a "breaking of the Union into two or more parts" from its own weakness, and which he deprecated "as an incalculable evil."[2] Hamilton and Randolph wrote to Washington with the same object. The former says, "It is clear, says every one with whom I have conversed, that the affairs of the National Government are not yet firmly established; * * that the period of the next House of Representatives is likely to prove the crisis of its permanent character." And Randolph says, "The Constitution is in a state of probation."[3]

[1] The American Union, 207.

[2] TUCKER'S Life of Jefferson; Cary and Lea, Philadelphia, i. 381.

[3] SPARK'S Life of Washington, x. 510, 513.

These letters express the true state of public feeling at the time. There existed a very general belief, that from inherent defects the Union could not be permanent. The Constitution had been carried by a very small majority in several of the States, and was an object of great dislike to a large minority in all. Many years elapsed before the People thoroughly understood or appreciated it. Until it was firmly established, and became an object of their patriotism, there were constant forebodings of the breaking up of the Union into independent States, a fresh geographical grouping into three or more Republics, or a return to the old System of the Confederation, somewhat modified. All this, however, is entirely different from the modern doctrine of secession. Jealousy of any interference with their domestic institutions, on the part of the South, and the fatal policy of Congress in their protective tariffs, have combined to infuse this pernicious poison into the veins of the Republic. These are the dragon's teeth, which, sown in ignorance and fatuity, have sprung up armed men all over the land.

But the doctrine of secession was preceded by that of nullification, and to this day finds separate advocates. De Tocqueville, in a few passages pregnant with meaning, thus explains nullification :—" I have shown in the proper place that the object of the Federal Constitution was not to form a league, but to create a National Government. *The Americans of the United States form a sole and undivided people in all the cases which are specified by that Constitution*, and upon these points the will of the Nation is expressed, as it is in all Constitutional Nations, by the voice of the majority. When the majority has pronounced its decision, it is the duty of the minority to submit. *Such is the sound legal doctrine, and the only one which agrees with the text of the Constitution, and the known intention of those who framed it.*"

" The partisans of nullification in the South maintain, on the contrary, that the intention of the Americans in uniting was not to reduce themselves to the condition of one and the same people ; that they meant to constitute a league of independent States ; and that each State,

consequently, retains its entire sovereignty, if not *de facto*, at least *de jure;* and has the right of putting its own construction upon the laws of Congress, and of suspending their execution within the limits of its own territory, if they are held to be unconstitutional or unjust."

"The entire doctrine of nullification is comprised in a sentence uttered by Vice-President Calhoun, the head of that party in the South, before the Senate of the United States in the year 1833: 'The Constitution is a compact to which the States were parties in their sovereign capacity; now, whenever a contract is entered into by parties which acknowledge no tribunal above their authority to decide in the last resort, each of them has a right to judge for itself the nature, extent, and obligations of the instrument.'"

"It is evident that such a doctrine destroys the very basis of the Federal Constitution, and brings back all the evils of the old Confederation, from which the Americans were supposed to have had a safe deliverance."[1]

The first notes of discord were unhappily

[1] Democracy in America, i. 390.

struck by Kentucky in 1798, and in Virginia in the following year, by men of no less note than Jefferson and Madison. Jefferson had been the author of the marriage vow pronounced by the States in their Declaration of Independence. Madison had approved in the Federal Convention of a veto on all State legislation; and now we find them *apparently* ignoring the Judiciary which they had lauded as the common tribunal of the States, and advocating the doctrine of State nullification. Expediency enters too much into the motives of human action. There is no doubt that Congress about this time made more than one attempt to overstep the limits of its authority. Excited by the fear of a French invasion, it had passed the Alien and Sedition Acts, which were generally considered as unconstitutional; and a still more dangerous attempt was made in their claim for jurisdiction under "the common law," for the National courts—that law which was not found in legislative acts, but deduced from previous decisions of the courts and from immemorial usage—a power clearly not granted by the people to the National

Government, and therefore "reserved to them or to the States."[1] Jefferson and Madison had both evidently become alarmed at these assumptions of power, and under this feeling, and perhaps not entirely uninfluenced by party considerations, they composed the celebrated resolutions adopted by the Kentucky and Virginia legislatures, with an accumulative force most liable to misconstruction, and, as it now appears to us, entirely unsuited to the occasion.

These resolutions expressed indeed the warmest attachment to the Constitution and the Union; declared (what was perfectly true)

[1] "Of all the doctrines which have ever been broached by the Federal Government, the novel one of the common law being in force and cognizable as an existing law in these courts, is to me the most formidable. All their other assumptions of ungiven powers have been in the detail. The bank law, the treaty doctrine, the sedition act, alien act, the undertaking to change the State laws of evidence in the State courts by certain parts of the stamp act, &c., &c., have been solitary, unconsequential, timid things, in comparison with the audacious, barefaced, and sweeping pretension to a system of law for the United States, without the adoption of their Legislature, and so infinitely beyond their power to adopt. If this assumption be yielded to, the State courts may be shut up, as there will then be nothing to hinder citizens of the same State suing each other in the Federal courts in every case, as on a bond, for instance, because the common law obliges payment of it, and the common law, they say, is their law."—JEFFERSON *to Randolph, Aug.* 1799. *Memoir of* JEFFERSON, iii. 433.

that the powers of the Federal Government *resulted* only from a compact to which the States were parties;—that in case of "a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States who are the parties thereto have the right and are in duty bound to interpose for correcting the progress of the evil and for maintaining within their respective limits the authorities, rights, and liberties, appertaining to them;"[1] and that the Federal measures then pronounced to be unconstitutional were "not law, but void and of no force or effect." These last words were, however, struck out by the Virginian Legislature.[2]

[1] History of the United States, by HILDRETH, ii. 276.

[2] "These words, though synonymous with 'unconstitutional,' were alleged by the critic to mean nullification; and being, of course, ascribed to me, I was, of course, a nullifier. It seems not to have occurred, that if the insertion of the words could convict me of being a nullifier, the erasure of them (unanimous, I believe) by the Legislature was the strongest of protests against the doctrine. * * * The vote in that case seems not to have engaged the attention due to it. It not merely deprives South Carolina of the authority of Virginia, on which she has relied and exulted so much in support of her cause, but turns that authority pointedly against her."—MADISON *to J. C. Cabell, April,* 1833. BENTON'S *Thirty Years' View,* i. 356.

It does not appear that these resolutions were ever acted upon. They were certainly never laid before Congress in any shape whatever; and they were formally disapproved by all the States (save North and South Carolina), "who expressly disclaimed the right of a State Legislature to decide on the validity of Acts of Congress." [1]

These disavowals were referred by the Virginian Assembly to a committee, who made a report, prepared by Madison himself, justifying the resolutions, but attaching a meaning to them very different from the modern interpretation of the right of absolute nullification. They were described as simple declarations, that the late proceedings of the National Government had been unconstitutional; but it distinctly acknowledged that it belonged to the Judiciary of the United States, and not to the State Legislatures, to decide the meaning of the Federal Constitution; that such declarations could not "be deemed in any point of view the assumption of the office of the judge;" that they were but "expressions of opinions,

[1] History of the United States, by HILDRETH, ii. 296.

unaccompanied by any other effect than what they might produce on opinion by exciting reflection. The expositions of the Judiciary, on the other hand, were carried into immediate effect by force." Under this interpretation we have here, then, nothing but the assertion, that in cases of palpable and dangerous exercises of unconstitutional power by the Federal Government, *the States* (not an individual State) have the right to interpose so as to maintain State rights.[1] The means of interposition had not been pointed out, but the report referred to enumerated them, viz., "the co-operation of other States in adopting similar resolutions, a direct appeal to Congress, and an explanatory amendment to the Constitution"—all of them clearly constitutional.

[1] "And what is the text in the proceedings of Virginia which this spurious doctrine of nullification claims for its patronage? It is found in the third of the resolutions of 1798. Now, is there anything here from which a 'single' State can infer a right to arrest or annul an act of the general Government which it may deem unconstitutional? So far from it, the obvious and proper inference precludes such a right. In a word, the nullifying claims, if reduced to practice, instead of being the conservative principle of the Constitution, would necessarily, and it may be said obviously, be a deadly poison." —*On Nullification, by* MADISON, *in* 1836. BENTON'S *Thirty Years' View*, i. 368.

No small portion of Madison's time, in his latter years, must have been occupied in repudiating, for himself and Mr. Jefferson, the doctrine of nullification, afterwards deduced from these resolutions.[1] But this repudiation was most complete. In a long letter to Mr. Everett he argued the whole question, and showed the absurdity of leaving the interpretation of constitutional problems to individual States, and he thus remarks, "That, to have left a final decision in such cases to each of the States, could not fail to make the Constitution and laws of the United States different in different States, was obvious, and not less obvious that this diversity of independent decisions must altogether distract the Government of the Union itself."[2] And from a score

[1] "The amount of this modified right of nullification is, that a single State may arrest the operation of a law of the United States, and institute a process which is to terminate in the ascendancy of a minority over a large majority. And this new-fangled theory is attempted to be fathered on Mr. Jefferson, the apostle of Republicanism, and whose own words declare that 'acquiescence in the decision of the majority is the vital principle of it.' Well may the friends of Mr. Jefferson disdain any sanction to it, or to any constitutional right of nullification from his opinions."—MADISON *on Nullification*. BENTON'S *Thirty Years' View*, i. 359.

[2] North American Review, xxxi. 1830.

of letters now before us to different parties on this subject, we take almost at random the following, to Mr. Trist, December, 1831:— "For this preposterous and anarchical pretension (nullification) there is not a shadow of countenance in the Constitution; and well that there is not, for it is certain that, with such a deadly poison in it, no Constitution would be sure of lasting a year." Upon these fatal resolutions all subsequent claims to nullification have been based, although their authors have thus utterly repudiated any such interpretation; but they have never served as an authority for secession.

When nullification was next asserted, it was by the New England States, in 1812, when they refused to call out the militia. But when, in 1814, the report of a joint committee of the Massachusetts Legislature recommended that conference of New England States which resulted in the "Hartford Convention," under the conviction that the Constitution had failed in securing for them equality of benefit with other parts of the Union, one of the objects was stated to be "to lay the foundation of a

radical reform in the National compact, by inviting to a future Convention a deputation from all the States in the Union."[1] The instructions to their delegates, and a circular letter to all the other New England governors, and finally the report of the Hartford Convention itself, all repeated this idea, and professed attachment to the Union. Indeed, the Convention positively repudiated all claim to nullifying acts of Congress, but at the same time asserted the right to prevent acts constitutionally void being carried into execution —a distinction without a difference.[2]

From this time nothing was heard of nullification until 1827, when Georgia came into collision with the general Government, and threatened to repel force by force. But the treason reached its height in the nullification by South Carolina, in 1832, of the new tariff act of that year, with the like threat. The debate upon the bill in Congress, authorizing the President to enforce the laws for collecting the revenue, opened out the whole question of

[1] History of the United States, HILDRETH, iii. 532.

[2] *Idem*, ii. 552.

nullification. Mr. Webster's speech on this occasion was a model of close reasoning and argumentative eloquence. It shivered the alleged rights both of secession and nullification to atoms. With inexorable logic he hunted these errors through all their tortuous windings into their only proper and natural limits of revolution. At this, his opponent, Mr. Hayne, of South Carolina, the great fellow-apostle, with Mr. Calhoun, of the gospel of nullification, started to his feet and said, "he did not contend for the mere right of revolution, but for the right of constitutional resistance. What he maintained was, that in case of plain, palpable violation of the Constitution by the general Government, a State may interpose, and that the interposition is constitutional."

Mr. Webster, however, showed that this was a mere evasion. Who was to decide when such a case occurred? Mr. Hayne had worded his resolution almost in the words of Mr. Madison's Virginian resolution before alluded to; but this only weakened his own position, since the very case which South Carolina had selected for her constitutional resistance, viz.,

a protective tariff, had been pronounced by this statesman perfectly constitutional. The Judiciary Court had been adopted by the People of the United States as a resort for justice in all their grievances referring to their State Governments, or to the Nation at large; and to controvert its decision there were only two methods:—Amendment or Revolution. "If we look," said Mr. Webster, "to the general nature of the case, could anything have been more preposterous, than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen, or twenty-four interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all—shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would anything, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a Government? No; it should not be denomi-

nated a Constitution; it should be called, rather, a collection of topics, for everlasting controversy; heads of a debate for a disputatious people. It would not be a Government."

Mr. Hayne, in reply, took up the same line of argument, which Mr. Spence has adopted. He denied that the Constitution was framed by the people at large instead of the States. He contended that it was a compact between the States. "When," said he, "in the preamble we find the words, 'We, the People of the United States,' it is clear they can only relate to the people, as citizens of the several States, because the Federal Government was not then in existence." Even in that case, argued Mr. Webster, the States would be the only parties to the compact, and the National Government would be of their creation. For the terms of that compact, and the method of their interpretation, we must look to the Constitution itself. No one State can have a right to fix upon it her own peculiar construction to the exclusion of the rest, but all must agree. And thus the Constitution would have been surrounded by the same difficulties and dangers,

as the articles of Confederation. Mr. Hayne's reply shows that no claim was then set up for the right of secession. Nullification itself was only intended to be a temporary arrest of what might be considered by a State, an unconstitutional exercise of power.

"A state," said he, "is brought into collision with the United States in relation to the exercise of unconstitutional powers: who is to decide between them? * * In all such cases some mode must be devised by mutual agreement for settling the difficulty; and most happily for us that mode is clearly indicated in the Constitution itself, and results indeed from the very form and structure of the Government. The creating power is three-fourths of the States. By their decision the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows of necessity, that in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common superior (that power which may give any character to the Constitution they

may think proper), viz., three-fourths of the States." [1]

Mr. Calhoun, at that time, held similar opinions. In a declaration drawn up by him in 1828 for the people of South Carolina, he says, that "by the adoption of the Federal Constitution the State had modified its original right of sovereignty whereby its individual consent was necessary to any change in its political condition, and by becoming a member of the Union had placed that power in the hands of three-fourths of the States in whom the highest power known to the Constitution actually resides." [2]

It has been well observed, that no Constitution ever provides for its own destruction. It is confessedly subject to the changes of time and to the chances of revolution. The Constitution of the United States provides against the latter and for the former in the power of amendment by appeal to the source of its authority—the Sovereign People. It guarantees the blessings of a free press, free speech,

[1] BRADFORD'S History of the Federal Government, Appendix.
[2] EVERETT'S Oration, 82.

free religion, free self-government in internal affairs, and trial by jury. The Southern States have rebelled against this Constitution in order to secure, and, if possible, to extend the institution of slavery; to create for the first time a State founded upon the subordination of the African race, as its unchangeable basis; to make slavery "that stone rejected by the first builders—the chief stone of the corner,"[1] and the Conservatives of England have justified their rebellion!

[1] So described by the Vice-President of the Confederacy.

APPENDIX.

A.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION.

Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ART. 1. The style of this Confederacy shall be "The United States of America."

ART. 2. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. 3. The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to or attacks made upon them on account of religion, sovereignty, trade, or any other pretence whatever.

ART. 4. The better to secure and perpetuate mutual

friendship and intercourse among the people of the different States in this union, the free inhabitants of each of these States (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any State to any other State, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. 5. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on Congress, except for treason, felony, or breach of the peace.

ART. 6. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the

consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies or shall have certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commission to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of

war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ART. 7. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislatures of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ART. 8. All charges of war and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury which shall be supplied by the several States in proportion to the value of all land within each State granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ART. 9. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the

sixth article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in time of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever, which authority shall always be exercised in the manner following: whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining

the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive: and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according

to the best of his judgment, without favour, affection, or hope of reward;" provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State within its own limits be not infringed or violated; establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldierlike manner, at the expense of the United States; and the officers and men to be clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same

manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them; nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is

desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. 10. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. 11. Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other Colony shall be admitted into the same unless such admission be agreed to by nine States.

ART. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. 13. Every State shall abide by the determinations of the United States in Congress assembled on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in

any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

These Articles shall be proposed to the legislatures of all the United States, to be considered, and, if approved of by them, they are advised to authorize their delegates to ratify the same in the Congress of the United States; which being done, the same shall become conclusive.

B.

CONSTITUTION OF THE UNITED STATES.

We, the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section I.—All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II.—1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within

this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION III.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration

of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year. And if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.—1. The times, places, and manner of hold-

ing elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION V.—1. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United

States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same: for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION VII.—1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and, if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each House

respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.—The Congress shall have power,

1. To lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the Supreme Court:

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the land and naval forces:

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts,

magazines, arsenals, dockyards, and other needful buildings: and,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION IX.—1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United

States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state.

SECTION X.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.—1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes

of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.[1]

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer thall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation :—

[1] Annulled. See Amendment, Art. XII.

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION II.—1. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.—He shall, from time to time, give to the Congress information of the state of the Union, and re-

commend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.—The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.—The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION II.—1. The Judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors; other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of

different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof and foreign States, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.—1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.—Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may,

by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.—1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person, held to service or labour in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim by the party to whom such service or labour may be due.

SECTION III.—1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.—The United States shall guarantee to

every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments; which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and

the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and Deputy from Virginia.

New Hampshire—John Langdon, Nicholas Gilman; *Massachusetts*—Nathaniel Gorham, Rufus King; *Connecticut*—William Samuel Johnson, Roger Sherman; *New York*—Alexander Hamilton; *New Jersey*—William Livingston, David Brearley, William Paterson, Jonathan Dayton; *Pennsylvania*—Benjamin Franklin, Thomas

Mifflin, Robert Morris, George Clymer, Thomas Fitzsimmons, Jared Ingersol, James Wilson, Gouverneur Morris; *Delaware*—George Read, Gunning Bedford, Jun., John Dickinson, Richard Bassett, Jacob Broom; *Maryland*—James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll; *Virginia*—John Blair, James Madison, Jun.; *North Carolina*—William Blount, Richard Dobbs Spaight, Hugh Williamson; *South Carolina*—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler; *Georgia*—William Few, Abraham Baldwin.

Attest WILLIAM JACKSON, *Secretary*.

AMENDMENTS.

The following Articles in addition to, and amendment of, the Constitution of the United States, having been ratified by the Legislatures of nine States, are equally obligatory with the Constitution itself.

I. CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

II. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

III. No soldier shall, in time of peace, be quartered in

any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by

jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

VIII. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

XI. The Judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

XII. § 1. The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence

of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. § 2. The person having the greatest number of votes as Vice-President shall be Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators and a majority of the whole number shall be necessary to a choice. § 3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

C.

EXTRACT FROM WASHINGTON'S FAREWELL ADDRESS.

Here, perhaps, I ought to stop: but a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be afforded to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel: nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The Unity of Government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence; the support of your tranquillity at home, your peace abroad; of your safety; of your prosperity; of that very liberty

which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken, in your minds, the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your National union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of *American*, which belongs to you in your National capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have, in a common cause, fought and triumphed together: the independence and liberty you possess are the work of joint councils and joint efforts, of common dangers, sufferings, and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest: here every portion of our country finds the most commanding motives for carefully guarding and preserving the Union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common government, finds, in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The South, in the same intercourse, benefiting by the agency of the North, sees its agriculture grow, and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated: and while it contributes, in different ways, to nourish and increase the general mass of the National navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted. The East, in like intercourse with the West, already finds, and in the progressive improvement of interior communication by land and water will more and more find, a valuable vent for the commodities which it brings from abroad, or manufactures at home. The West derives from the East supplies requisite to its growth and comfort; and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one Nation. Any other tenure by which the West can hold this essential advantage, whether derived from its

own separate strength or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in Union, all the parties combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value, they must derive from Union an exemption from those broils and wars between themselves which so frequently afflict neighbouring countries not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues, would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty; in this sense it is, that your Union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of patriotic desire. Is there a doubt, whether a common government can embrace so large a sphere?—Let experience solve it. To listen to mere speculation, in such a case, were criminal. We are authorized to hope, that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy

issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavour to weaken its bands.

In contemplating the causes which may disturb our Union, it occurs as a matter of serious concern that any ground should have been furnished for characterizing parties by geographical discriminations — Northern and Southern — Atlantic and Western — whence designing men may endeavour to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations: they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our Western country have lately had a useful lesson on this head: they have seen in the negotiation by the Executive, and in the unanimous ratification by the Senate, of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the General Government and in the Atlantic States unfriendly to their general interests in regard to the Mississippi; they have been witnesses to the formation of two treaties, that with Great Britain and that with Spain, which secure to them everything they could desire in respect to our foreign relations towards confirming their prosperity. Will

it not be their wisdom to rely for the preservation of these advantages on the Union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliance, however strict, between the parts can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of government better calculated than your former for an intimate Union and for the efficacious management of your common concerns. This Government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the People to make and to alter their constitutions of government; *but the Constitution which at any time exists, till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all. The very idea of the power and the right of the People to establish government presupposes the duty of every individual to obey the established Government.*

All obstructions to the execution of the laws, all com-

binations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the Nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common councils, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp, for themselves, the reins of government; destroying, afterwards, the very engines which have lifted them to unjust dominion.

Towards the preservation of your Government, and the permanency of your present happy state, it is requisite, not only that you speedily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember

that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing Constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigour as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

D.

THE FRENCH AND AMERICAN TARIFFS COMPARED.

"COMING, now, to the second point to which I have desired to invite your attention—that of the nicety of classification required for giving to each and every branch of manufacture the precise protection that it needs—we find the only case of the kind in the Morrill tariff to be that of cottons, and that even there the discriminations are absolutely as nothing when compared to those of the one to which you point as likely to produce a revolution in the commercial system of the world. Linens are by us disposed of in two short lines, and both of these are *ad valorem*. Woollen yarns have three lines where you have no less than thirty-six; and the only counting of threads that is required by us is that of four qualities of cotton, with a variety of duties as easy of calculation as is the counting of your fingers. Our whole tariff is, indeed, simplicity itself when compared with the classification of your own, in which there are no less than *one hundred and forty kinds of cotton yarn, each with its separate rate of duty!* Flax and hemp yarns, single unbleached, single bleached or dyed, and twisted unbleached, twisted bleached or dyed, are put into twenty-four classes, and under as many different rates of duty. Linens have twenty-four descriptions deter-

mined by the number of threads, ranging from eight to twenty-four threads to five square millimetres—these varieties being run through the several conditions of unbleached, bleached, printed, and figured, with the duties varied in every case; the lowest at 30 francs and the highest at 535 francs per 100 kilogrammes (220 pounds avoirdupois). Jute yarns and tissues stand in the tables in equally numerous descriptions and varied duties; and in cottons the classification is carried to the extent of providing different rates for fifteen qualities of single unbleached yarns, fifteen of bleached, fifteen of dyed, forty-five kinds or qualities of twisted in two strands, two kinds of yarn of three threads, and forty-five kinds of warped yarns, with the duties varied, according to fineness, as has been already said, no less than 140 times—beginning with ten centimes and rising to no less than three francs per kilogramme, or about one-quarter of a dollar per pound. Of the cotton tissues I have given in the table only the coarsest, the medium, and the finest qualities. In the schedule there are eight qualities, the description of one of which will serve as a specimen of the whole. It reads thus: 'Cotton tissues weighing 11 kilogrammes, or more than 100 square metres of thirty-five threads or less to the five square millimetres, 50 centimes per kilogramme.' Had any such discrimination been attempted here, we should have been assured that the object of the framers of our tariff had been the utter annihilation of international intercourse, and there would have been a howl among our British free-traders such as could have found no parallel in the history of the world since the establishment of the first custom-house."—*Letter to Chevalier, by H. C. Carey, Philadelphia, 28th Oct.*, 1860.

E.

THE WASHINGTON TREATY AND THE SETTLEMENT OF THE NORTH-EAST BOUNDARY.

THERE is one charge brought by Mr. Spence against the United States, which, though not exactly falling within the range of our discussion, we may incidentally be allowed to notice. It refers to the settlement of the north-east boundary, under the treaty of Washington, in 1841, concluded by Lord Ashburton.

Soon after England had recognized American independence, in 1781, she executed a treaty with the United States, wherein that boundary was described as taking the line of highlands dividing the waters flowing into the St. Lawrence from those flowing into the Atlantic. Upon this basis, many ineffectual efforts were made to determine the highlands referred to, England claiming one line, the United States another. The dispute was then referred to the king of Holland, who decided against both claims, declaring a strict compliance with the requirements of the treaty impossible, as no such highlands could be found, and recommending a compromise. To this England consented, but the United States objected. By the year 1841, the growing occupation of the lands on the frontier rendered an immediate settlement imperative; and Sir

Robert Peel despatched Lord Ashburton on a special embassy to Washington for the purpose. Mutual concessions between Mr. Webster and himself soon led to a settlement very much to the advantage of the two countries, but very unsatisfactory to the politicians on both sides. Each of the ministers was accused by his countrymen of sacrificing National claims.

Now Mr. Spence says that, "When the treaty on this subject was made by Lord Ashburton, the Government of the United States was in possession of the map sent by Franklin," who had negotiated the treaty of 1783, "to the French ministry, and deposited in their archives—a map authenticated by a note in his own handwriting. On that map appeared a strong red line drawn by Franklin's own hand and referred to in his note." Mr. Spence goes on to state that the map in question had been discovered by Mr. Jared Sparks (the American historian) in the archives of Paris, and had been forwarded by him to his Government, who had also in their possession another map, from Jefferson's collection, with a similar line—both confirming the British claim; but that all this evidence was suppressed and the compromise accepted.[1]

Mr. Spence has admitted two errors into his statement.—

First, Mr. Sparks made his discovery *after*, and not before, the treaty had been concluded.

Secondly, that map is not authenticated by Franklin, nor is there any proof that the red line was drawn by him, but the reverse.

In the House of Commons Sir Robert Peel said:—

[1] The American Union, 297.

"On subsequent enquiry, at Paris, we found a map, which must be the map referred to by Mr. Jared Sparks. There is placed upon that map a broad red line, and that line marks out the boundary as claimed by the British.

"It is probably a map by M. d'Anville, of 1746, and there can be no doubt but that it is the map referred to by Mr. Jared Sparks; but we can trace no indication of connection between it and the despatch of Dr. Franklin. *To say that they were connected is a mere unfounded inference.*"[1]

And, again, Mr. Disraeli said,—"They had all heard of a map with a broad red line, which map, making out the boundary according to the original claim of the English Government, was discovered apparently in the Archives of the Foreign-Office in Paris, subsequent to the settlement of the question, and had been talked of and written of by many who had never seen it. He, however, perhaps, was in a position to speak of it with more authority than some members of the House, for he had seen it. It was a map eighteen inches square, and was drawn by D'Anville. He believed that it was one of the smallest maps that D'Anville had ever drawn. It was not, by the bye, a map of the disputed territory, nor a map of Canada, but a map of the whole of North America, and, consequently, this strong red line would itself occupy no slight part of the disputed territory. In fact, it blotted out no inconsiderable portion of the state of Maine, which could occupy but a very small space in a map of North America, eighteen inches square."[2]

[1] HANSARD, lxvii. 1248. [2] *Idem*, lxvii. 1304.

But this is not all. Mr. Disraeli was able to cite the evidence of Franklin himself on the point, in the form of a letter addressed to Mr. Livingstone :—

"I am perfectly clear in the remembrance that the map we used in tracing the boundary was brought to the treaty by the Commissioners from England, and that it was the same that was published by Mitchell twenty years ago."

"I remember, too, that in that part of the boundary (Passamaquoddy Bay, in Maine), we relied much on the opinion of Mr. Adams, who had been concerned in some former disputes concerning those territories, and that the map we used was Mitchell's map. Congress was acquainted with it at the time by a letter to their Secretary for Foreign Affairs."

And again, in a note on the preliminary articles of the treaty of 1783, Franklin says,—"The map used in the course of our negotiation was Mitchell's."

Now, a map of Mitchell's, dated 1753, upon a large scale, marked by a broad red line *following the American claim*, was found in the Royal Library in this country. Over that line, in four different places, was written—"Boundary, as described by our negotiator, Mr. Oswald." This map was in possession of Lord Ashburton, but Sir R. Peel says, "he did not communicate its contents to Mr. Webster."

Another map was found in Paris, inscribed "A map of the boundary of the United States, as agreed to by the treaty of 1783, by Mr. Faden, geographer to the King" (of England); and, finally, a map was issued by a political journal (*Bewe's Journal*) of the day to illustrate its report of the debates in Parliament upon the treaty. And

both these last-named maps also confirmed the American claim.

There is, indeed, no positive evidence as to the identical map used by the negotiators; but it is clear that if any charge of the *suppressio veri* can lie at all it is against ourselves. The whole inquiry shows, however, that any attempt to impugn the good faith of either Government, or darken the fame of the statesmen engaged upon the treaty of Washington, upon such evidence as we have adduced, would be equally vain and unjustifiable.

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